

CHAPTER ONE **INTRODUCTION**

1.1 Introduction

The Bureau of Land Management (BLM), California Desert District, Palm Springs-South Coast Field Office, is preparing an environmental impact statement (EIS) to address a proposed land exchange between the BLM and the Agua Caliente Band of Cahuilla Indians (Tribe). This land exchange was first *formally* considered when the BLM and the Tribe entered into an agreement in 1999 to coordinate and cooperate in the management of public lands within and outside the external boundaries of the Agua Caliente Indian Reservation (ACIR) within the then-proposed Santa Rosa and San Jacinto Mountains National Monument (Monument).¹ This cooperative agreement provided the foundation for a memorandum of understanding entered into between the BLM and the Tribe, also in 1999, to jointly identify opportunities to exchange public land parcels within the ACIR for nonfederal lands outside the ACIR, provided that all exchange parcels are within the Santa Rosa and San Jacinto Mountains.

Project location

Public and Tribal lands identified for the proposed land exchange are entirely within the Santa Rosa and San Jacinto Mountains National Monument (see Figure 1), located in southern California approximately 100 miles east of Los Angeles. The Monument runs northwest to southeast along the edge of the Coachella Valley and its nine cities: Palm Springs, Cathedral City, Rancho Mirage, Indian Wells, Palm Desert, La Quinta, Indio, Coachella, and Desert Hot Springs. Public lands and lands owned by the Agua Caliente Band of Cahuilla Indians proposed for exchange are situated within the Palm Canyon area of the Monument, generally south and west of Palm Springs. These lands, characterized by their mountainous quality, occur on the western flank of the Santa Rosa Mountains and the eastern flank of the San Jacinto Mountains.

The Monument was established on October 24, 2000, upon enactment of Public Law 106-351 (Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Title 16 of the United States Code [U.S.C.] section 431 et seq.), in order to preserve the nationally significant biological, cultural, recreational, geological, educational, and scientific values found in the Santa Rosa and San Jacinto Mountains, and to secure now and for future generations the opportunity to experience and enjoy the magnificent vistas, wildlife, landforms, and natural and cultural resources in these mountains, and to recreate therein (section 2(b) of the Act). The BLM currently manages approximately 97,000 acres of public lands within the 280,000-acre Monument. The remaining lands are managed by the U.S. Forest Service, State of California, Agua Caliente Band of Cahuilla Indians, local municipal jurisdictions, and private landowners.

The Agua Caliente Indian Reservation was established through executive orders issued in 1876 and 1877, which withdrew even-numbered sections in T.4S. R.4E., T.4S. R.5E., and T.5S. R.4E.

¹ “Public lands” means any land and interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos (Federal Land Policy and Management Act of 1976, section 103(e)). Tribal trust lands, allotted trust lands, and fee lands within the Agua Caliente Indian Reservation are not public lands.

from public ownership to create the ACIR;² sections 16 and 36 and tracts for which the title had passed out of the United States Government were excepted from the withdrawal and, therefore, excluded from the ACIR. The ACIR is technically limited to those lands previously designated by executive orders; only Congress can now modify reservation boundaries.

Authority for the proposed land exchange

Land exchanges are generally conducted under authority contained in sections 102, 205, 206, and 207 of the Federal Land Policy and Management Act of 1976 (FLPMA, 90 Stat. 2743; 43 U.S.C. 1715, 1716, and 1717). FLPMA was amended in 1988 by the Federal Land Exchange Facilitation Act (FLEFA, 102 Stat. 1087). FLEFA contains provisions to facilitate and expedite land exchanges by establishing uniform rules and regulations for appraisals, and procedures and guidelines for resolution of appraisal disputes. (BLM 2005b)

FLPMA sections 205, 206, and 207, as amended, establish five requirements for land exchanges. The requirements are:

- Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans (section 205(b)).
- The public interest will be well served by making that exchange (section 206(a)).
- The Secretary of the Interior may accept title to any nonfederal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of federal ownership and which are located in the same state as the nonfederal land or interest to be acquired (section 206(b)).
- The values of the lands exchanged shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary of the Interior as the circumstances require so land as payment does not exceed 25 percent of the total value of the lands or interests transferred out of federal ownership. The Secretary shall try to reduce the amount of payment of money to as small an amount as possible (section 206(b)).
- No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any state or of the United States (section 207).³

Specific to the proposed land exchange between the BLM and the Tribe, section 6(e) of the Santa Rosa and San Jacinto Mountains National Monument Act of provides:

² Throughout this draft EIS, “Township” and “Range” are abbreviated “T” and “R,” respectively, in descriptions of land locations, while their respective cardinal locations of “South” and “East” are abbreviated as “S” and “E.” All such descriptions relating to the proposed land exchange are in reference to the San Bernardino Base and Meridian.

³ Although FLPMA does not define “person,” applicable regulations do. In accordance with 43 CFR Part 2200—Exchanges: General Procedures—a *person* is “any individual, corporation, or other legal entity legally capable to hold title to and convey land” (43 CFR § 2200.0-5(r)). Whereas the Tribe is neither an individual nor a corporation, it is a legal entity that can legally hold title to land in fee (and convey such land), distinct from that held in trust by the federal government for the benefit of a tribe (see Penobscot Indian Nation v. Key Bank of Maine, et al., 112 F. 3d 538, U.S. Court of Appeals, First Circuit, May 5, 1997). Fee land, whether held by a tribe or private entity, is subject to state and federal law. As such, FLPMA (through the regulations at 43 CFR Part 2200) is applicable and does not prohibit the exchange of federal land with the Tribe. (Solicitor 2001)

- In order to support the cooperative management agreement in effect with the Tribe as of the date of the enactment of this Act, the Secretary of the Interior may, without further authorization by law, exchange lands which the BLM has acquired using amounts provided under the Land and Water Conservation Fund Act of 1965 with the Tribe. Any such land exchange may include the exchange of federally owned property within or outside the boundaries of the Monument for property owned by the Tribe within or outside the boundaries of the Monument.

Section 1.6 of this draft EIS addresses conformance of the proposed land exchange with statutes, regulations, policies, plans, and management strategies, including FLPMA and the Monument's establishing legislation.

Organization of this draft EIS

Chapter one of this draft EIS addresses the following: why preparation of an EIS is necessary to address the proposed land exchange (section 1.2); purpose and need for the proposed action (section 1.3); issues raised by the public to be addressed in the EIS, as well as responses to the public's issue questions (section 1.4); public comments not construed as issues (section 1.5); conformance of the proposed land exchange with statutes, regulations, policies, plans, and management strategies (section 1.6); and land use classification and valid existing rights (section 1.7). Chapter two describes three alternatives for the proposed land exchange, including the BLM's preferred alternative and the no action alternative. Chapter three describes the affected environment for the project area. Chapter four describes potential direct, indirect, and cumulative effects associated with each alternative. Chapter five discusses public participation during the EIS process, and identifies the preparers of this document. Acronym definitions, references, maps, and appendices follow chapter five.

1.2 Determination of Need to Prepare an Environmental Impact Statement

On July 27, 2010, the BLM released environmental assessment (EA) CA-060-0010-0005 for public review and comment; this EA addressed environmental effects of the proposed land exchange between the BLM and the Tribe. A high level of controversy was stimulated by the proposal; comments were received from 144 individuals, ten organizations, and three governmental entities. Based on public comments and upon further internal review, it was determined that preparation of an EIS is necessary to address potentially significant effects of the proposed land exchange.⁴ In reaching this determination, consideration was given to location of the proposed action within the Santa Rosa and San Jacinto Mountains National Monument; its proximity to the Palm Canyon Creek National Wild and Scenic River and potential disposal of public lands determined as eligible for designation as a Wild and Scenic River; the designation of certain public lands proposed for exchange as critical habitat for the endangered Peninsular

⁴ Title 40 CFR Parts 1500-1508 constitute the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA. The regulations at § 1501.4 identify factors to be considered by a federal agency when determining whether to prepare an EIS (versus an EA or a categorical exclusion). The regulations at § 1508.27 define "significantly" as used in NEPA; its use requires considerations of both context—meaning that the significance of an action must be analyzed in several contexts such as society as a whole, the affected region, the affected interests, and the locality—and intensity, which refers to the severity of impact.

bighorn sheep; and the absence of a regulatory mechanism for public participation in future decision-making processes affecting lands transferred to the Tribe.

Change in circumstances since release of the environmental assessment

When environmental assessment CA-060-0010-0005 was released in 2010 for public review and comment, the land exchange was anticipated to require multiple transactions, or phases, for the Tribe to acquire the entirety of public lands selected for the exchange because it was deemed likely that additional lands would need to be purchased by the Tribe in order to equalize land values;⁵ such purchases were not expected to occur before the first phase of the exchange was initiated. Since then, the Tribe decided it will not purchase additional lands if needed to acquire all the selected public lands. Instead, the land exchange will be considered complete once land values are equalized through an agreed-upon procedure regarding the order in which the selected public lands are considered in the value equalization process (see section 2.2).

As a consequence, the extent of public lands to be exchanged may be reduced if the *relative* estimated value of the combined public lands compared to that of the combined Tribal lands has not substantially changed since 2003 when estimates of value were first identified in “Supplement to the Agreement to Initiate Assembled Land Exchange between the Bureau of Land Management and the Agua Caliente Band of Cahuilla Indians” (BLM and ACBCI 2003). While *actual* land values may have changed over the last decade, the *relative* value between the selected public lands and the offered Tribal lands is of primary importance in this land exchange, i.e., whether the combined value of the public lands is less than, equal to, or more than the combined value of the Tribal lands.

This change in circumstances is reflected in the proposed action and alternatives. Three scenarios of the proposed land exchange (proposed action) are presented, each describing different amounts of the selected public lands that may be exchanged for the offered Tribal lands depending on the outcome of the land value equalization process. The preferred alternative describes yet one more configuration of public lands that may be exchanged (see sections 2.2 and 2.3).

1.3 Purpose and Need

The underlying purpose and need to which an agency is responding in proposing alternatives, including the proposed action, must be specified in the environmental impact statement (Title 40 of the Code of Federal Regulations [CFR] § 1502.13). Generally, these alternatives respond to a problem or opportunity described in the purpose and need statement, thereby providing a basis for eventual selection of an alternative in a decision (BLM 2008a).

The purpose and need for land exchanges, in general, is to improve opportunities for the use or protection of public lands and to promote their effective and efficient management, provided that the public interest will be served by making such exchanges. The purpose of the proposed land exchange between the BLM and the Tribe is to reduce the extent of “checkerboard” landownership, and facilitate effective and efficient management of public and Tribal lands by consolidating the respective land bases. It would provide the BLM and the Tribe with more

⁵ The BLM generally uses the term “value” with respect to lands considered in an exchange proposal. This is primarily because section 206 of FLPMA and the land exchange regulations at 43 CFR Part 2200 use the term “value.” However, in many cases, “price” may be a more accurate word and is preferred by some appraisers.

logical and consistent land management responsibility in the Santa Rosa and San Jacinto Mountains National Monument. For the Tribe, the exchange would support the resource preservation goals of its Indian Canyons Master Plan (ICMP: ACBCI 2008) and implementation of its Tribal Habitat Conservation Plan (THCP: ACBCI 2010) by placing certain public lands within the external ACIR boundary under Tribal management. The purpose and need for the proposed land exchange is further addressed in section 1.4(a) of this draft EIS.

BLM responsibilities regarding the disposal of public lands

The BLM is a federal agency within the U.S. Department of the Interior responsible for managing the public lands in accordance with federal law, regulation, and policy in order to sustain the health, diversity, and productivity of the these lands for their use and enjoyment by present and future generations. Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 et seq.), the BLM’s “organic act,” provides that public lands or interests therein may be disposed of by exchange where it is determined that the public interest will be well served by making that exchange, provided that when considering the public interest, full consideration is given to better federal land management and the needs of state and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife, and it is found that the values and objectives which federal lands or interests to be conveyed may serve if retained in federal ownership are not more than the values of the nonfederal lands or interests and the public objectives they could serve if acquired.

Decision to be made

The BLM will decide whether to exchange public lands for lands owned by the Agua Caliente Band of Cahuilla Indians, and if an exchange is to occur, the extent and location of these public lands. This draft EIS—prepared in compliance with the National Environmental Policy Act of 1970 (NEPA, 42 U.S.C. 4321 et seq.), the Council on Environmental Quality’s (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508), and the BLM’s NEPA Manual Handbook H-1790-1 (BLM 2008a)—is intended to inform the public about environmental consequences of the proposed land exchange and, after having evaluated public comments regarding this draft EIS, help BLM officials make a decision that is based on an understanding of these consequences.

1.4 Issues Addressed

The issues described below have been identified for analysis in this draft environmental impact statement. These issues were developed with input from BLM staff and management, from comments submitted by members of the public regarding BLM’s environmental assessment CA-060-0010-0005 (see Appendix H); from comments provided during public scoping, which occurred in March 2012 in advance of preparing this draft EIS (see scoping report, Appendix I); and upon coordination with the Tribe’s staff.

Issues are presented in six subject categories. Responses to questions regarding issues that are not subject to environmental analysis, and therefore would not be addressed in chapter four (“Environmental Consequences”) of this draft EIS, are provided below.⁶ Where responses are

⁶ While many issues may arise during scoping, not all of the issues raised warrant analysis in an EIS. Issues raised through scoping are analyzed only if (1) necessary to make a reasoned choice between alternatives, i.e., the issue relates to how the proposed action or alternatives respond to the purpose and

addressed by environmental analysis in chapter four, it is so indicated. Since the issue questions identified below are derived, in part, from public comments submitted for BLM's environmental assessment CA-060-0010-0005, responses thereto constitute formal responses to concerns raised regarding analyses contained in the EA.

a. Purpose and Need for the Proposed Land Exchange

(i) Issue question:

How would the proposed land exchange and alternatives facilitate effective management of federal and Tribal lands through consolidation of lands and a reduction of checkerboard land ownership, particularly with respect to sections 16 and 36, T.4S. R.4E.? Conversely, how would continuation of current management as expressed in a no action alternative adversely affect the management of federal and Tribal lands?

Response:

This issue question is preeminent since it addresses the reasons for initiating a land exchange between the BLM and the Tribe. To begin, a discussion about ratios of public-nonpublic land interfaces, or boundaries, to acres managed by the BLM may assist the reader to better understand how consolidating land ownership improves opportunities for the use or protection of public lands and promotes their effective and efficient management. With respect to consolidation, these ratios provide a quantitative comparison of alternatives that, in conjunction with qualitative assessments, speak to the purpose and need for the proposed land exchange.⁷

The selected public lands for the proposed land exchange, totaling about 5,799 acres, comprise 10 blocks or "islands" of public lands that are noncontiguous with other public lands, and one block (section 36, T.4S. R.4E.) that is contiguous with public lands not proposed for exchange. These blocks range in size from approximately 20 acres (one of three small blocks in section 18, T.4S. R.4E.) to about 1,280 acres (sections 16 and 21, T.5S. R.4E., combined as one block, and sections 29 and 32, T.5S. R.4E., combined as another block, each containing about 1,280 acres). Most of these public land blocks are intermingled with Tribal lands (Tribal reserves and allotted trust parcels).

The total length of public-nonpublic land interfaces, or boundaries, for the 10 blocks of public lands that are noncontiguous with other public lands is approximately 32 miles. These 10 blocks contain about 5,291 acres, or 8.3 square miles. To provide perspective, a typical township is comprised of 36 sections of land totaling about 23,040 acres, or about 36 square miles. If under the jurisdiction of the BLM in its

need, and (2) if significant, i.e., the issue is associated with a significant direct, indirect, or cumulative impact, or where analysis is necessary to determine the significance of impact (BLM 2008a).

⁷ The tables in Appendix J—Acres, Perimeters, and Consolidation: Public and Tribal Lands—provide the basis for this discussion regarding consolidation of public lands and how the proposed land exchange and alternatives yield different ratios of public-nonpublic land interfaces to acres managed by the BLM.

entirety and completely surrounded by nonpublic lands, the public-nonpublic land interfaces of this single 36-square-mile block of public lands total 24 miles in length, or about one mile of boundary per 960 acres. By comparison, the public-nonpublic land interfaces of the 10 blocks herein at issue are about 33 percent longer—32 miles—than the interfaces of a consolidated township, yet the total acreage of the selected public lands within them is about 23 percent of that for a consolidated township. Hence, the ratio of the public-nonpublic land interface mileage to acres of the selected public lands (excluding section 36, T.4S R.4E.) is about one mile of boundary per 165 acres, or approximately one-sixth the acreage per mile of boundary of that for a consolidated township.⁸

Why is checkerboard or intermingled landownership a problem?

In general, as the extent of checkerboard or intermingled landownership increases—which usually coincides with greater lengths of jurisdictional interfaces per acre—so does the difficulty for any one entity to effectively and efficiently manage their lands. Whether it affects how habitat for wildlife species is protected or how access to trails is governed, different “rules” for intermingled lands can be contradictory and, therefore, may adversely affect the achievement of identified goals and objectives, whether now or in the future. For example, the management of public lands designated as critical habitat for an endangered species is subject to the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and the regulations promulgated therefrom, including the requirement for consultation with the U.S. Fish and Wildlife Service (USFWS) for any action that “may affect” the listed species, or action that may adversely modify critical habitat. Intermingled nonpublic lands, however, may be subject to different statutes and regulations. Both the short-term and long-term management of these different jurisdictional lands, as a result, may be inconsistent and could adversely affect species recovery efforts. As another example, lack of consistency in how non-motorized recreational access is governed for trails spanning multiple jurisdictions not only lends confusion to the recreationist, it creates difficulty for the jurisdictional entities to effectively manage such access, including enforcement where restrictions apply and dissemination of information about recreational opportunities.

These management challenges may be overcome commensurate to the degree that policies and plans pertaining to the intermingled lands are consistent with one another. Even where such policies and plans are substantially consistent, however, coordinated management to address resource concerns can require increased staff time, thereby decreasing overall staff productivity, and result in delayed responses that could exacerbate threats to resource conditions. But consistency of policies and plans is not always possible, especially where the applicable statutes and regulations establish dissimilar management approaches for the various jurisdictions. Therefore, managing fewer miles, rather than more miles, of public land boundaries and

⁸ Public lands in section 36, T.4S. R.4E., which comprise the 11th block of public lands selected for the proposed land exchange, are not discussed at this point because unlike the other 10 blocks of selected public lands that are completely surrounded by nonpublic lands, these adjoin public lands not selected for exchange with the Tribe. Including them in the discussion here would dramatically complicate the comparison being made with a consolidated township. These lands, however, are addressed at a later point.

interfaces with nonfederal lands generally presents fewer, rather than more, management challenges.

Threats to resource integrity emanating from adjacent nonpublic lands:

Maintaining the integrity of natural and cultural resources on public lands may also depend on the types of use that occur now or may occur in the future on the contiguous nonpublic lands. For example, where off-highway vehicle activities are enjoyed on nonpublic lands but such activities are restricted or not allowed on the contiguous public lands, occurrences of vehicular trespass on public lands are more likely than otherwise might be expected. The result of such trespass could be resource degradation and higher costs of management to prevent vehicle incursions. Where adjacent nonpublic lands have been developed as residential areas, the potential for resource degradation from vehicular or other incursions is similarly increased, again leading to higher management costs to protect the public lands.

Are such threats of concern relative to the public lands selected for exchange with the Tribe? It depends on their location. Most of these public lands and the contiguous nonpublic lands are located in rugged, mountainous terrain. Consequently, the potential for incursions by motorized vehicles or as related to adjacent residential or commercial development is currently low and is anticipated to remain low in the future; the terrain itself restricts such activities. However, there is potential for vehicular and other incursions onto public lands in sections 16 and 36, T.4S. R.4E., from possible residential or commercial development where “developable” nonpublic, non-Tribal lands are contiguous with these public lands. The northeastern portion of section 16 is within and adjacent to the floor of Tachevah Canyon where development is possible, though would be quite challenging due to the need for significant new flood control facilities.

On the other hand, section 31, T.4S. R.5E., which is contiguous with public lands in section 36, T.4S. R.4E., lends itself to development due to its rolling terrain; a proposal for residential and commercial development on these private lands was once proposed, but rejected by voters in Palm Springs. As circumstances change, new proposals for development could occur, and the potential for unauthorized incursions onto the adjacent public lands would once again be elevated. Should the BLM dispose of section 36, T.4S. R.4E., which contains scattered development possibilities in its eastern half, it could increase the potential for development-related incursions into the adjacent sections containing public lands if it were to be developed (particularly if the contiguous private section 31, T.4S. R.5E., should also be developed). However, such incursions would be limited given the rugged mountainous terrain that lays between the eastern portion of section 36 and the public lands to the south (section 1, T.5S. R.4E., and section 6, T.5S. R.5E.), which are not included in the proposed land exchange.

If threats to resource conditions on public lands are unlikely to emanate from the contiguous nonpublic lands in this rugged, mountainous terrain—except perhaps with respect to sections 16 and 36, T.4S. R.4E., and the nonpublic lands contiguous thereto—the purpose and need for the exchange may appear questionable. However, one must consider more than potential threats to the public lands selected for the land exchange; one must also consider potential threats to the public lands not proposed

for exchange but adjacent to the offered Tribal lands, and how the exchange would change the level of threat.

Section 7, T.5S. R.5E., one of two parcels offered by the Tribe, is contiguous with three sections of public lands not selected for exchange (sections 6, 8, and 18, T.5S. R.5E.). Clearly, section 7 is developable property given its gently undulating terrain (when compared to much of the local area's mountainous slopes); it is where Michael Dunn in the 1960s proposed residential and commercial development, and for which he initiated construction of a road to provide access to the project (commonly known today as "Dunn Road").⁹ While project construction was not initiated, the road was not completed, and numerous obstacles would need to be overcome for development to occur (e.g., the establishment of utilities and other infrastructure), these lands continue to present development opportunities as long as they are not held in public ownership.¹⁰ Hence, the potential remains for development-related incursions to occur on the contiguous public lands. Acquisition of section 7 by the BLM through the proposed land exchange would eliminate the potential for such incursions.

Consolidation of public lands resulting from the proposed land exchange

Here is what the proposed land exchange would achieve with respect to consolidation of public lands: First, upon transferring the 10 blocks of noncontiguous public lands and one block of contiguous public lands (as described above) to the Tribe, the BLM would no longer have management responsibility for them, substantially reducing the extent of public-nonpublic land interfaces within the external boundaries of the Agua Caliente Indian Reservation and alleviating potential management challenges inherent to checkerboard landownership in this area.¹¹ Second, immediately east of the ACIR where the BLM would acquire lands offered by the Tribe, the land exchange would create one contiguous block of public lands where now there are four noncontiguous blocks of public lands; these public lands are separate from those selected for the land exchange. Whereas the public-nonpublic land interfaces/boundaries of the four noncontiguous blocks total approximately 47 miles surrounding about 12,636 acres of public lands—with blocks ranging in size from about 480 acres to 10,293 acres—acquisition of the offered Tribal lands (1,470 acres)

⁹ The City of Palm Springs annexed 32 square miles of the Santa Rosa Mountains along the Dunn Road in 1972, and zoned it for a population of 40,000 people. This area was referred to as "Palm Springs Atajo," which included section 7 as a focus of development.

¹⁰ In accordance with section 3(b) of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, nothing in the establishment of the Monument affects any property rights of any Indian reservation, any individually held trust lands, any other Indian allotments, any lands or interests in lands held by the State of California, any political subdivision of the State of California, any special district, or the Mount San Jacinto Winter Park Authority, or any private property rights within the boundaries of the Monument. Therefore, proposals for the development of section 7 would be subject only to the rules and regulations of the applicable governing jurisdiction, and not be limited in any manner by virtue of its location within the Monument.

¹¹ The only public lands remaining under BLM management within the ACIR would be about 537 acres in section 1, T.5S. R.4E. These public lands acquired by the BLM in 2010 are not identified for potential exchange with the Tribe.

would create a single block of public lands consisting of approximately 14,106 acres and reduce the public-nonpublic land interfaces to about 42.9 miles in length, thereby changing the ratio of public-nonpublic land interface mileage to public land acreage from one mile per 225 acres (no action alternative) to one mile per 329 acres, a 46 percent increase in acres managed per mile of interface.¹²

Depending on appraised value of the selected public lands and the offered Tribal lands, however, and since no additional lands will be purchased by the Tribe if necessary to complete the proposed land exchange, some selected public lands may remain in public ownership once land values have been equalized following the process described in section 2.2, thereby yielding a different ratio of public-nonpublic land interface mileage to public land acreage. For example, the BLM's preferred alternative specifically excludes section 36 from the land exchange (see section 2.3). If section 36 is retained by the BLM, which could also occur under the proposed action consequent to the land value equalization process, the single block of public lands resulting from acquisition of the offered Tribal lands would increase from approximately 14,106 acres (under the proposed action) to 14,614 acres, and the public-nonpublic land interfaces would concomitantly increase to about 45.6 miles, thereby establishing a ratio of one mile of public-nonpublic land interfaces per 320 acres of public land for the consolidated block. Although the BLM's retention of section 36 suggests that protection of public lands may be reduced since the ratio of public-nonpublic land interfaces to acres managed would decrease from one mile per 329 acres to one mile per 320 acres, the difference is small (a change of approximately 2.7 percent). The increase in size of the consolidated block of public lands would likewise be small (about 3.6 percent). However, the BLM's retention of section 36 maximizes the size of a consolidated block of public lands consistent with the purpose and need for the proposed land exchange and avoids creating a new "island" of Tribal lands, thereby potentially exacerbating management issues associated with checkerboard landownership.¹³

If additional public lands selected for the proposed land exchange are retained by the BLM as a result of the land value equalization process described in section 2.2, the ratio of public-nonpublic land interfaces to public lands would further change. If the BLM retained all Category 2 and 3 lands (totaling 1,784 acres, or about 31 percent of the 5,799 acres of selected public lands), the ratio would be one mile of public-nonpublic land interfaces per 297 acres of public lands. This may be the most likely scenario *if* the relative value of the selected public lands compared to the offered Tribal lands as determined through the land value appraisal (to be forthcoming) is consistent with estimated land values provided in "Supplement to the Agreement to

¹² Since the purpose and need for the proposed land exchange is to consolidate public and Tribal lands in order to provide more logical and consistent land management responsibility in the Santa Rosa and San Jacinto Mountains National Monument, consideration must be given to any public and Tribal lands that, as a result of the exchange, would form contiguous blocks of land under a single jurisdiction, rather than consider only the selected public lands and offered Tribal lands for this purpose.

¹³ Whereas the Tribe's acquisition of public lands in section 36 would consolidate these 508 acres with approximately 30 acres of nonfederal lands that are located in the adjoining section (sec. 35, T.4S. R.4E) and subject to provisions of the THCP, this consolidation would not form a larger block with other Tribal lands, thereby maintaining an "island" of lands under Tribal jurisdiction (albeit larger in size).

Initiate Assembled Land Exchange Between the Bureau of Land Management and the Agua Caliente Band of Cahuilla Indians” (BLM and ACBCI 2003). According to the Supplement, the estimated value of BLM Category 1 lands in 2003 was \$1,414,000, while the estimated value of the offered Tribal lands at that time was \$1,360,000, a difference of \$54,000 or about four percent.¹⁴ If this *relative* value remains about the same, as to be determined through the appraisal, the land exchange would be considered complete upon the exchange of BLM Category 1 lands for the offered Tribal lands; equalization would be finalized either through a cash payment to the BLM (since the value of the public lands exceeds the value of the Tribal lands) or subtracting public lands from the exchange.

On the other hand, if the *relative* value has changed since 2003 such that the offered Tribal lands have gained more value than the selected public lands, BLM Category 2 lands may be added to Category 1 lands to complete the exchange. In this scenario whereby the BLM would retain all Category 3 lands (totaling 1,143 acres, or about 20 percent of the selected public lands), the ratio of public-nonpublic land interface mileage to acres of public lands would be one mile per 308 acres.

Summary

The extent of public and Tribal land consolidation and the ratio of miles of public-nonpublic land interfaces to acres of public lands are dependent on the outcome of the land value equalization process which determines the extent of the selected public lands to be exchanged for the offered Tribal lands. These ratios range from 1:225 for the no action alternative to 1:297 for the potentially likely alternative described above, 1:320 for the preferred alternative, and 1:329 for the proposed action, differences of about 32 percent, 42 percent, and 46 percent, respectively (compared to the no action alternative). Consolidation ranges from 14 blocks of public lands under the no action alternative to one block under the preferred alternative.¹⁵

Although most of the selected public lands and offered Tribal lands would be managed in much the same manner both before and after completion of the proposed land exchange, a clear public benefit derived from the exchange relates to the BLM’s acquisition of section 7, T.5S. R.5E., in that it would permanently eliminate development potential for residential and/or commercial purposes in this section. While near-term development is unlikely, future development is not altogether precluded if the property remains in nonpublic ownership.

¹⁴ The estimated values provided in the supplement were based on the most recent appraisal information at the time, but may not have reflected then-current market value for exchange purposes.

¹⁵ To reiterate and emphasize, the ratios of public-nonpublic land interfaces/boundaries to consolidated public land acreages consider public lands selected for the proposed land exchange *and* non-selected public lands that are or would become consolidated upon acquisition of the offered Tribal lands.

(ii) Issue question:

How would the proposed land exchange and alternatives support the resource preservation goals identified in the Indian Canyons Master Plan and enhance implementation of the Tribal Habitat Conservation Plan?

Response:

The Indian Canyons Master Plan 2007 update, approved in May 2008, identifies the following objectives related to the goal of preserving and restoring cultural, natural, and scenic values: (1) avoidance, protection, and restoration of sensitive cultural sites; (2) protection and restoration of natural resources consistent with the Tribal Habitat Conservation Plan; (3) preservation of non-impacted desert and mountain views; (4) prohibition of development that is not compatible with the natural and cultural resources of the Indian Canyons, or does not meet the objectives of the Heritage Park; and (5) minimization of impacts associated with increased visitation (ACBCI 2008).

The boundary of the Indian Canyons planning area does not include any public lands selected for the proposed land exchange. But certain of these selected public lands are identified in the ICMP as land acquisition priorities. Specifically, public land sections 16, 21, and 27, T.5S. R.4E., are identified as level two priority acquisitions; and public land sections 5, 29, 32, and 36, T.5S. R.4E., are identified as level three priority acquisitions. Level two acquisitions are important in expanding and linking existing Tribal reserve boundaries, while level three acquisitions are typically located in rugged terrain and possess very limited development potential. Upon acquiring these properties and creating a contiguous block of Tribal lands, management effectiveness and efficiency is enhanced, thereby better facilitating accomplishment of the Tribe's goals and objectives identified in the ICMP. In essence, the proposed land exchange would enhance the management of Tribal lands under the ICMP in much the same manner as described above for public lands upon consolidation of lands and reduction of checkerboard landownership (see issue question a(i)).

Similarly, the proposed land exchange would enhance implementation of the Tribal Habitat Conservation Plan by consolidating lands under Tribal jurisdiction, thereby improving opportunities for the use or protection of Tribal lands and promoting their effective and efficient management.

(iii) Issue question:

How would the proposed land exchange and alternatives support the conservation of resource values in the project area?

Response:

A detailed response to this issue question is provided in section 4.2.2.1.1 of this draft EIS. To summarize, the proposed land exchange and alternatives are consistent with or exceed conservation goals of the BLM's governing land use plan and the Tribe's governing habitat conservation plan. Conservation of lands acquired by the BLM would occur at the 99 percent or greater level (as prescribed by the agency's land use

plan—the California Desert Conservation Area Plan Amendment for the Coachella Valley, BLM 2002a), while conservation of lands acquired by the Tribe would occur at the 96.2 percent level, which is greater than prescribed for lands currently subject to the THCP (ACBCI 2010). Overall conservation of the combined BLM and Tribal lands in the project area would remain about the same under all alternatives (about 88 percent).

b. Conformance with Statutes, Regulations, Policies, Plans, and Management Strategies

(i) Issue question:

How do the proposed land exchange and alternatives conform to the Federal Land Policy and Management Act of 1976; the Santa Rosa and San Jacinto Mountains National Monument Act of 2000; the Omnibus Public Land Management Act of 2009; Secretarial Order No. 3308 regarding management of the National Landscape Conservation System; the BLM’s 15-Year Strategy for the National Landscape Conservation System, 2010-2025; BLM Manual 6220 regarding management of national monuments, national conservation areas, and similar designations; and the BLM-California’s Five-Year Strategy for National Conservation Lands, 2013-2018, particularly with respect to protection of the resource values for which the Monument was designated?

Response:

See section 1.6, *Conformance with Statutes, Regulations, Policies, Plans, and Management Strategies*.

(ii) Issue question:

How do the proposed land exchange and alternatives conform to the BLM’s California Desert Conservation Area (CDCA) Plan, as amended, particularly with respect to the land tenure exchange and sale criteria described in the CDCA Plan Amendment for the Coachella Valley which establish that land exchanges and sales may be considered if they would, in part, result in a net benefit to conservation areas (which include the Santa Rosa and San Jacinto Mountains National Monument, and the Santa Rosa and San Jacinto Conservation Area established through the Coachella Valley Multiple Species Habitat Conservation Plan), not remove rare species or their habitat, and not divest of public domain lands in a manner which eliminates a significant public benefit?

Response:

See section 1.6, *Conformance with Statutes, Regulations, Policies, Plans, and Management Strategies*.

(iii) Issue question:

How does the Tribe’s suspension of consultation with the U.S. Fish and Wildlife Service to acquire a section 10(a) permit under the Endangered Species Act for the Tribal Habitat Conservation Plan affect analyses in the EIS?

Response:

On July 27, 2010, when the BLM released environmental assessment CA-060-0010-0005 addressing the proposed land exchange for public review and comment, the THCP was in draft form pending completion of consultation with the U.S. Fish and Wildlife Service. In October 2010, the Tribe informed the USFWS that consultation is to be indefinitely suspended for the THCP. This circumstance does not affect analyses in this EIS for the following reasons:

As expressed in the final rule revising designated critical habitat for Peninsular bighorn sheep (74 FR 17288, April 14, 2009), the USFWS acknowledges that fish, wildlife, and other natural resources are better managed under Tribal authorities, policies, and programs than through federal regulation wherever possible and practicable. When the Tribal Council approved the THCP on November 2, 2010, it committed to manage Tribal lands consistent with the identified goals and objectives of the habitat conservation plan and in accordance with the stated actions therein. That the Tribe suspended consultation with the USFWS does not change its commitment to conservation management under the approved THCP. Based on the Tribe's inherent sovereign authority to manage and regulate land use and resources within the reservation, and pursuant to the U.S. Fish and Wildlife Service's Native American Policy (USFWS 1994), and Joint Secretarial Order No. 3206 regarding American Indian tribal rights, federal-tribal trust responsibilities, and the Endangered Species Act of 1973 (Offices of the Secretaries of Commerce and the Interior 1997), the USFWS gives deference to and supports tribal resource management policies and implementation activities such as those set forth in the THCP.

U.S. Fish and Wildlife Service's Native American Policy:

Through this policy, the USFWS established its commitment to support the rights of Native Americans to be self-governing, and further support the authority of Native American governments to manage, co-manage, or cooperatively manage fish and wildlife resources, and to protect their federally recognized authorities.

Joint Secretarial Order No. 3206:

The joint Secretarial Order issued by the Secretary of Commerce and the Secretary of the Interior pursuant to the Endangered Species Act (ESA) clarifies the responsibilities of the component agencies, bureaus, and offices of the two departments when actions taken under authority of the ESA and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights. Through the order, the Secretaries recognize that Indian tribes are governmental sovereigns with inherent powers to make and enforce laws, administer justice, and manage and control their natural resources. An appendix to the order states, "the Service shall, *upon the request of an Indian tribe* [emphasis added] or the [Bureau of Indian Affairs], cooperatively review and assess tribal conservation measures for sensitive species (including candidate, proposed and listed species) which may be included in tribal resource management plans." Hence, just as the USFWS may be requested by a tribe to review and assess tribal conservation measures, the request can be withdrawn; cooperative review and assessment of tribal conservation measures is not mandated.

(iv) Issue question:

How would the disposal of section 36, T.5S. R.4E., within which the BLM determined through its California Desert Conservation Area Plan Amendment for the Coachella Valley that certain public lands were eligible for designation as a National Wild and Scenic River, conform to the plan amendment and be consistent with statutory requirements to protect the values which comprise the basis for the eligibility determination?

Response:

The CDCA Plan Amendment for the Coachella Valley (BLM 2002a) commits the BLM to manage public lands within one-quarter mile of Palm Canyon Creek (i.e., the canyon bottom) within section 36, T.5S. R.4E., in such manner as to protect its free-flowing characteristics; protect, and to the degree practicable enhance, the outstandingly remarkable values (ORVs) which contribute to its eligibility; and ensure that its tentative classification as “scenic” will not be affected before a determination of its suitability or non-suitability as a Wild and Scenic River can be made by the U.S. Congress. The plan amendment identifies Palm Canyon’s ORVs as providing habitat for several federal and state listed endangered species and state species of special concern, and containing a prehistoric trail and several archaeological sites significant in Cahuilla oral history.

However, the plan amendment, while having determined the eligibility of public lands in section 36 as a National Wild and Scenic River and having identified protective measures pending a determination of suitability or non-suitability, also acknowledges that public lands may be exchanged with the Tribe to support the existing cooperative agreement with the BLM. While such disposal would preclude its designation as a National Wild and Scenic River, disposing of public lands containing an eligible Wild and Scenic River segment is not prohibited by statute or regulation. Upon acquisition of section 36 by the Tribe, protection and enhancement of river values therein would be addressed through implementation of the THCP, as well as terms of the cooperative agreement entered into between the BLM and the Tribe (BLM and ACBCI 1999a).

Effects of the proposed land exchange and alternatives with respect to eligibility of public lands in section 36 as a Wild and Scenic River are further described in section 4.2.3.

c. Development of Alternatives and Mitigation Measures

(i) Issue question:

Will alternatives be developed that identify mitigation in the form of reserved federal rights or interests for public access to the exchanged lands, as well as variations of properties to be included in the exchange, such as the BLM’s retention of sections 16 and 36, T.4S. R.4E.?

Response:

The regulations at 43 CFR § 2200.06(i) provide that the public interest may be protected through the use of reserved rights or interests in the federal lands to be exchanged, as appropriate. As described in the BLM's Land Exchange Handbook H-2200-1, it is the BLM's policy that deed use restrictions, covenants, and reservations be kept to an absolute minimum and used only where needed to protect the public interest. Further, mitigation in the form of deed restrictions on public land conveyed into nonpublic ownership, in general, should only be used where required by law or executive order, and clearly supported by the environmental documentation. The policy additionally constrains the use of reservations to those supported by the public benefit determination process and fully considered in the appraisal process. (BLM 2005b) An alternative that reserves federal rights or interests for public access to lands acquired by the Tribe is evaluated for appropriateness in section 2.5(b) of this draft EIS.

Regarding the development of alternatives that provide variations of public lands to be included in the exchange, it is not warranted in this circumstance (except for development of the BLM's preferred alternative as discussed below and described in section 2.3). The rationale for this conclusion is as follows:

A range of alternatives explores alternate means of meeting the purpose and need for the action, i.e., the purpose and need statement helps define the range of alternatives to be analyzed. In determining the alternatives to be considered, the emphasis is on what is *reasonable* rather than *desirable* from the standpoint of an applicant or other interested party; whether an alternative is reasonable can only be defined in reference to the purpose and need for the action. (BLM 2008a)

As previously discussed, the purpose and need for the proposed land exchange between the BLM and the Tribe is to reduce the extent of "checkerboard" landownership, thereby facilitating more effective and efficient management of public and Tribal lands by consolidating the land base for each jurisdiction (see sections 1.3 and 1.4(a)). This consolidation would provide both the BLM and the Tribe with more logical and consistent land management responsibility in the Monument. Since all public lands identified for potential exchange are located within the external boundaries of the Agua Caliente Indian Reservation, and all Tribal lands identified for exchange are located outside these boundaries, implementation of the proposed land exchange (excluding section 36, T.4S. R.4E., as reflected in the preferred alternative) would achieve the stated purpose and need.

Considering that alternatives must be designed to meet the purpose and need for the proposed land exchange, therefore, the reader might logically conclude that *any* combination of the selected public lands would be appropriate by virtue of being identified in the proposed action (excepting section 36, T.4S. R.4E.), particularly since an exchange of all the selected public lands is not likely since the 2003 estimated value for these public lands exceeds the estimated value of the offered Tribal lands, and the Tribe decided to not purchase additional lands in order to acquire all the selected public lands. Consequently, it would appear reasonable to identify various combinations of the selected public lands that equate in value to the offered Tribal lands. One must ask, however, whether developing multiple

alternatives with various permutations of the selected public lands provides the decision-maker and the public a clear basis for choice among options.

Again, it is important to emphasize what is *reasonable* in identifying alternatives with respect to the purpose and need for the proposed land exchange, and not what may be *desirable* in light of other concerns. At the heart of the issue question being addressed here is future public access to trails located in sections 16 and 36, T.4S. R.4E. While it may be desired by some to develop an alternative or alternatives that exclude these sections in order to retain management of the trails thereon by the BLM, the purpose and need for the land exchange is not to ensure or enhance access for recreational purposes. Nor is the purpose and need to preserve habitat for Peninsular bighorn sheep. If one or the other of these desires had been identified as the purpose and need for the land exchange, the range of alternatives would be different than as herein described.

To reiterate, would multiple alternatives with various permutations of the selected public lands provide a clear basis for choice among options? Not likely. With respect to consolidating the land base for the BLM and the Tribe, any one alternative would not be substantially different from another. Given current circumstances—the precise extent of selected public lands that may be exchanged is currently unknown pending conclusion of the land appraisal process to occur after release of this draft EIS for public review and comment—the most viable option for addressing the equalization of land values at this time is to follow an agreed-upon sequence for considering public lands in the value equalization process. This sequence is identified in section 2.2. Accordingly, environmental analyses in this draft EIS address environmental effects as they relate to the sequential equalization process, though primarily in relative terms since the extent of selected public lands to be ultimately exchanged for the offered Tribal lands cannot be determined until the appraisal process has been concluded.

However, one alternative (as already mentioned) *is* reasonable when measured against the purpose and need statement. This alternative would not have been construed as reasonable until 2010 when the BLM acquired the majority of property in section 1, T.5S. R.4E.; this property is contiguous with public lands in section 36, T.4S. R.4E., which is one of the selected public land parcels identified for the proposed land exchange, and public lands in section 6, T.5S. R.5E., which is not included in the exchange. Section 6, in turn, is also contiguous with section 7, T.5S. R.5E., which consists of Tribal property offered in the exchange. Since the disposal of public lands in section 36 would create an island of Tribal lands (in combination with a very small piece of Tribal fee lands in section 35) and reduce the potential size of a consolidated block of public lands from approximately 14,533 acres to about 14,026 acres upon implementation of the proposed land exchange (see response to issue question a(i)), an outcome which is inconsistent with the purpose and need for the proposed land exchange, an alternative that excludes section 36 from the land exchange is warranted (see section 2.3).

(ii) Issue question:

Could conditions be incorporated in the title deed such that specific areas in the exchange parcels acquired by the Tribe will not be developed in order to protect Peninsular bighorn sheep and other species?

Response:

As previously described (see the response to issue question c(i)), the regulations at 43 CFR § 2200.06(i) provide that the public interest may be protected through the use of reserved rights or interests in the federal lands to be exchanged, as appropriate. Such interests may relate to the recovery of endangered Peninsular bighorn sheep and sustaining populations of other wildlife species. The BLM's policy with respect to incorporating deed restrictions on federal lands to be conveyed, however, substantially limits when such restrictions may be utilized. An alternative mandating the Tribe to refrain from developing any acquired public lands is evaluated for appropriateness in section 2.5(b).

(iii) Issue question:

What are the advantages and disadvantages of ongoing coordinated management of the proposed exchange lands as would occur under the no action alternative?

Response:

The purpose and need statement for the proposed land exchange between the BLM and the Tribe describes advantages realized from the exchange, thereby also addressing disadvantages of not undertaking it as would occur under the no action alternative (which “defaults” to a coordinated management approach consistent with the cooperative agreement of 1999; see sections 1.3 and 1.4(a) above). Environmental consequences of the no action alternative are further described in chapter four of this draft EIS.

d. Public Access to Trails

(i) Issue question:

How would the management of lands acquired by the Tribe, pursuant to the Indian Canyons Master Plan and Tribal Habitat Conservation Plan, affect current and future public use and enjoyment of existing trails, acknowledging Tribal sovereignty over the lands it manages and the absence of a regulatory mechanism for public involvement in future decision-making processes?

Response:

The Indian Canyons Master Plan (ACBCI 2008), which was developed to include the Indian Canyons Heritage Park, and the Tribal Habitat Conservation Plan (ACBCI 2010) represent commitments by the Tribe to manage lands under its jurisdiction in a manner prescribed by the plans. With respect to the management of trails and public access to them, the ICMP acknowledges that trails are key in connecting the Indian

Canyons to surrounding state and federal lands, and that the opportunity provided to visitors to explore large tracts of land, whether on horseback or on foot, make the area a desirable destination for trail users. The THCP reinforces the Tribe's mission with regard to trails, it being that in partnership with local and governmental agencies, the Tribe will maintain and manage trails in a manner that (1) results in minimal impact upon the environment; (2) protects scenic, cultural, and historic values; (3) conserves resources; and (4) provides safe and adequate trails for the user.

According to the THCP, trails under the management of the Tribe will be kept open and managed under provisions of the Tribe's trails management plan, the ICMP, the cooperative agreement with the BLM, and the THCP. The Tribe's trails management plan (ACBCI 2010, Appendix D) primarily addresses trail maintenance and design, rather than establishing prescriptions that govern access. The ICMP provides limited guidance regarding access for non-motorized recreation. The cooperative agreement with the BLM likewise does not specifically address how opportunities for recreation are to be afforded or constrained. Hence, the THCP constitutes the Tribe's primary voice in how trail access is to be governed on the public lands acquired under the land exchange. In accordance with the THCP, the following restrictions currently apply to users of the Indian Canyons: an admission fee is charged, hours of operation are limited, dogs and other pets are prohibited, hiking is allowed on designated trails only (no cross-country travel), no bicycles or motorized vehicles are allowed on trails, and no overnight camping is permitted.

Conversely, access to trails on the selected public lands is free, hours of access are not limited, bicycles are allowed, and cross-country (off trail) travel is permitted, whether on foot, bicycle, or horse, though dogs are likewise prohibited. Opportunities for bicycle and cross-country travel, however, may change if and wherever the BLM retains the public lands proposed for exchange. As a cooperator in development of the multi-jurisdictional trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan (CVAG 2007), the BLM may issue a decision that is generally consistent with management prescriptions established through the trails plan.¹⁶ Accordingly, bicycle access to certain trails or trail segments on public lands in section 36, T.4S. R.4E., would be prohibited, consistent with a decision by the City of Palm Springs' Parks and Recreation Commission to prohibit bicycles on nonfederal segments of the Araby, Garstin, and Shannon Trails. However, bicycle access would continue to be allowed on the Berns, Thielman, and Wild Horse Trails, which also traverse section 36.¹⁷ Whether cross-country travel on

¹⁶ The BLM and the Tribe are not signatories to the CVMSHCP, which applies only to nonfederal and non-Tribal lands. Instead, the management of trails by the BLM and the Tribe is subject to their respective approved management plans. While the BLM may issue a decision for public lands that is generally consistent with management prescriptions established through the trails management plan element of the CVMSHCP, the final outcome of the decision making process is unknown. The decision will be based on environmental analysis provided in, and public response to, the applicable NEPA document.

¹⁷ Pursuant to authority vested in the City of Palm Springs' Parks and Recreation Commission (as provided by section 12.72.030 of the City's municipal code), and in accordance with a resolution of December 8, 1992, by the Commission, bicycle travel on the Araby, Berns, Garstin, and Shannon Trails is prohibited to avoid potential conflicts with horseback riders, thereby enhancing safety for both mountain bikers and equestrians. However, the BLM may allow bicycles on public land segments of the Berns Trail

the selected public lands will continue to be allowed or be prohibited is undetermined.

The primary concerns raised by the public regarding management of trails on public lands acquired by the Tribe regard whether a fee will be charged for the use of these trails, whether hours or seasons of access will be limited, and whether bicycles will be allowed, particularly with respect to trails located in sections 16 and 36, T.4S. R.4E. (The predominance of “official” trails on the selected public lands—about 64 percent of total trail mileage on these lands, or 6.2 of 9.7 miles—occurs within sections 16 and 36.) Simply stated, will access to trails on public lands change upon approval of the proposed land exchange?

A management agreement entered into between the BLM and the Tribe in November 2009 was intended to alleviate public concerns about access to trails in sections 16 and 36 upon their acquisition by the Tribe (see Appendix H, environmental assessment CA-060-0010-0005). Through this agreement, the Tribe “agrees that [sections 16 and 36] remain accessible and subject to the reasonable use and enjoyment by the general public.” Further, the Tribe “may adopt rules and regulations for the use and enjoyment of [trails in these sections],” and that “any such rules and regulations adopted shall conform to and be consistent with the policies and guidelines set forth in the Indian Canyons Master Plan and the Tribal Habitat Conservation Plan, and with similar measures now in effect regarding existing Tribal Reserves.”

Appropriately, the Tribe did not commit to forever managing trails on the acquired public lands in a manner consistent with current BLM management; the BLM itself makes no such commitment for managing public lands. Changing circumstances could result in a change of management prescriptions, consistent with the adaptive management approach adopted by the Tribe in its THCP. Likewise, the BLM, if it were to retain the selected public lands identified for the proposed land exchange, could restrict hours or seasons of access if warranted to protect the values for which the Monument was designated, and could prohibit bicycles if warranted to protect resources and/or public safety. Decisions regarding such restrictions would require conformance with statutory and regulatory requirements—e.g., preparation of an appropriate NEPA document—and would be consistent with the BLM’s adaptive management approach. Whether the BLM could charge a fee, however, is governed by the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801 et seq.), which permits the BLM to charge a standard amenity fee at a “National Conservation Area,” but charging such a fee is unlikely given other constraints established by the statute.¹⁸

contrary to the City’s prohibition since the vast majority of the trail occurs on public lands and the prohibition may not be warranted. The BLM would coordinate with the City to modify its restriction for the small segment of the trail occurring on nonfederal lands.

¹⁸ The Santa Rosa and San Jacinto Mountains National Monument is located within the California Desert Conservation Area (CDCA), which was designated by Congress in 1976 through the Federal Land Policy and Management Act. Whether the CDCA would be considered a “National Conservation Area” consistent with the Federal Lands Recreation Enhancement Act for purposes of charging fees has not been ascertained.

Nevertheless, the 2009 agreement begs the question of what would immediately happen regarding public access to trails upon the Tribe's acquisition of public lands in sections 16 and 36.

Would a fee be charged for the use trails in these parcels? Not likely for the following reasons: (1) The charging of a fee would be inconsistent with the manner in which the Tribe manages trails outside the Indian Canyons Heritage Park. For example, portions of the Skyline Trail are located in sections 18 and 20, T.4S. R.4E., which comprise Tribal reserves within the Agua Caliente Indian Reservation, yet the Tribe does not charge a fee for the use of this trail.¹⁹ The Dry Wash, East Fork, East Fork Loop, Fern Canyon, Jo Pond, Palm Canyon, Vandeventer, West Fork, and Wild Horse Trails are located on Tribal reserve and Tribal fee lands in sections 13, 14, 15, 22, 23, 24, and 28, T.5S. R.4E., and sections 7 and 19, T.5S. R.5E. (the latter two sections of which comprise the offered Tribal lands in the proposed land exchange), yet the Tribe does not charge a fee for their use as well.²⁰ (2) While the agreement indicates that rules and regulations adopted for the use of trails in sections 16 and 36 would conform to and be consistent with the policies of the ICMP, these sections occur outside the planning area for the ICMP, as well as outside the land acquisition areas identified by the ICMP. Therefore, implementation of the ICMP policies in sections 16 and 36 would not likely occur. (3) Logistical constraints work against the charging of fees for trail use in sections 16 and 36. Typically, fees are most easily collected where the managing entity controls the trailhead or trailheads. Collecting fees where another entity controls trailheads, and where trails connect with other trails outside the managing entity's control, is problematic. Such circumstances exist for trails in sections 16 and 36.

Upon acquisition of sections 16 and 36 by the Tribe, would the hours or seasons of public access to trails be restricted in the same manner as access is currently restricted to the Indian Canyons Heritage Park? For the same reasons described above regarding the charging of fees, an hourly or seasonal restriction is unlikely. Enforcement of such restrictions would be particularly problematic given the opportunities for access to these trails from adjacent non-Tribal properties.

Would bicycles be prohibited on trails in sections 16 and 36 upon acquisition of these sections by the Tribe? It is reasonable to assume that bicycle access to segments of the Araby, Garstin, and Shannon Trails where they traverse public lands in section 36, T.4S. R.4E., would be prohibited upon acquisition of these lands by the Tribe, consistent with a decision by the City of Palm Springs' Parks and Recreation Commission to prohibit bicycles on nonfederal segments of these trails. The BLM decision in this regard is pending, though likely as described in the trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan

¹⁹ The Skyline Trail also traverses public lands in section 16, T.4S. R.4E., though it is not contiguous with segments of the trail on Tribal lands in sections 18 and 20.

²⁰ Fees for use of trails in these sections would only be charged when the public accesses the Indian Canyons Heritage Park from the north through the toll booth. Alternative access to these trails from the east or south would not result in users being charged a fee.

(CVAG 2007). However, bicycle access would continue to be allowed on the Berns, Thielman, and Wild Horse Trails, which also traverse section 36, consistent with the BLM's current and planned management decisions pertaining to them.²¹

Perhaps public concerns about trail access on any lands acquired from the BLM are best addressed by the Tribe on a webpage site developed specifically in response to frequently asked questions about the proposed land exchange (ACBCI 2012). In responding to the question, "will access to these trails change once the exchange takes place," the Tribe commits that it "will manage the trails in the same manner [as the BLM]," and that "changing or curtailing public access to the trails is not feasible or practical." With respect to fees, the Tribe, while acknowledging that it would have the right to charge access fees, recognizes that "the feasibility of doing so with so many access points would make it difficult." It is reasonable to assume, therefore, that upon approval of the proposed land exchange, the Tribe would not require a fee for the use of trails on lands acquired from the BLM, would not restrict hours of access to these trails, and would not prohibit bicycles where such access is currently allowed on these lands, except where needed for consistency with restrictions imposed by the City of Palm Springs for trails in section 36, T.4S. R.4E.

An analysis regarding the effects of Tribal management of public lands and the trails located thereon acquired through the proposed land exchange is contained in chapter four of this draft EIS.

(ii) Issue question:

How would the trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) be affected by the proposed land exchange and alternatives, particularly with respect to the public's access to trails that comprise the identified trail system, and construction of the proposed Garstin to Thielman perimeter trail and its use by hikers with dogs?

Response:

The multi-jurisdictional trails management plan element of the CVMSHCP identifies a system of trails in the Santa Rosa and San Jacinto Mountains Conservation Area (which was established through the CVMSHCP), within which certain trails or trail segments are subject to management prescriptions established by the plan. Such prescriptions are applicable to signatory jurisdictions of the CVMSHCP only, which include neither the BLM nor the Tribe. The BLM intends to issue a separate decision for the management of trails on public lands within the conservation area.²² Tribal

²¹ BLM's environmental assessment CA-060-0010-0005, released for public review and comment on July 27, 2010, indicated that bicycles would be prohibited on lands acquired by the Tribe consistent with the THCP. This assertion was subsequently deemed by the Tribe as erroneous.

²² While the CVMSHCP, including the trails management plan for the Santa Rosa and San Jacinto Mountains Conservation Area, was approved in October 2008 upon issuance of permits to its signatories by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife, the BLM has yet to issue its separate decision for trails management. While the intent is to establish consistency in the management of trails across multiple jurisdictions to the greatest extent practicable, some differences may remain consequent to the BLM's decision.

lands are not subject to the CVMSHCP.

This system includes trails or trail segments located on public lands selected for exchange: Araby, Berns, Garstin, Indian Potrero, Jo Pond, Palm Canyon, Shannon, Skyline, Thielman, and Wild Horse Trails. If all selected public lands were transferred to the Tribe, these trails or trail segments would be managed consistent with the ICMP and THCP, not the CVMSHCP. While certain aspects of trails management are the same or similar under these plans, some differences may continue to exist, such as those affecting opportunities for cross-country travel and camping.²³ Conversely, trails on lands offered by the Tribe under the land exchange, which include segments of the Dunn Road Trail, East Fork Loop Trail, and Wild Horse Trail, would be added to the system of trails subject to the multi-jurisdictional trails management plan element of the CVMSHCP for which the BLM would issue its separate decision. Ultimately, effects of the proposed land exchange on the system of trails subject to the trails management plan element of the CVMSHCP depends on whether some or all of the public lands selected for the exchange will be transferred to the Tribe. Impacts to the trail system as a consequence of the proposed land exchange and alternatives are addressed in chapter four of this draft EIS.

The trails management plan element of the CVMSHCP addresses construction of the Garstin to Thielman perimeter trail (anticipated to be named the Frank Bogert Trail upon construction), which would be available for use by hikers with leashed dogs. This trail, in connecting the Garstin and Thielman Trails, would traverse public lands in section 36, T.4S. R.4E., which are identified for exchange, and public lands in the adjoining section 1, T.5S. R.4E., which are not included in the exchange proposal. Two aspects of trail management are pertinent with respect to the issue question: the development of new trails and access with dogs on Tribal lands. New trails, per se, are not prohibited on Tribal lands, but their development must be consistent with goals and objectives identified in the ICMP and THCP. With respect to construction of the proposed Garstin to Thielman perimeter trail and uses thereof, the ICMP states, “An extensive trail system currently exists in the Indian Canyons and surrounding lands, [therefore] at this time expansion of trails is not considered necessary; however, future proposals for new trails that provide connectivity to adjacent public lands should consider management prescriptions established for those lands through the Trails Management Plan for the Santa Rosa and San Jacinto Mountains.” Since the proposed trail would provide connectivity to adjacent public lands and use of the trail by hikers with leashed dogs is prescribed in the trails management plan element of the CVMSHCP, it is reasonable to conclude that upon acquisition of public lands in section 36 by the Tribe, construction of the Garstin to Thielman perimeter trails and its use by hikers with dogs may be approved by the Tribe. The effects of the proposed land exchange in this regard are addressed in chapter four of this draft EIS.

²³ As indicated in the response to issue question d(i), the Tribe has asserted that upon acquisition of the selected public lands, it will manage trails in the same manner as did the BLM, and that changing or curtailing public access to trails is not feasible or practical. This assertion was made in full recognition of management policies and guidelines established in the ICMP and THCP. However, changing circumstances could result in a change of management prescriptions, consistent with the adaptive management approach adopted by the Tribe in its THCP, as well as by the BLM in its land use plan.

(iii) Issue question:

How will the qualitative characteristics of trails affected by the proposed land exchange and alternatives, such as aesthetics, variety, steepness, condition, and ecology that establish a trail's importance to the public, be addressed in the EIS?

Response:

To address these trail characteristics in the EIS would require the BLM to methodically characterize each of the many trails on public lands in this manner, for only by doing so could an analysis be constructed that compares the relative values of each trail in light of its characteristics, hence its "importance." Only then could the BLM determine whether the proposed land exchange would transfer trails of greater importance to the Tribe when compared to the BLM's acquisition of trails that may be of even greater, equal, or lesser importance.

Is this approach to environmental analysis reasonable? No. The matrix of trail characteristics for every trail would be extremely complex and not lend itself to a meaningful evaluation of relative "importance," particularly since the factors identified in the issue question possess different degrees of importance when weighed by different trail users. For example, where aesthetics and ecology of the Garstin Trail may be of the most value to one individual who likes to sightsee and study nature, the trail's steepness and condition may be of greatest value to another individual who uses the trail primarily for exercise. Instead, it is sufficient to acknowledge that trails on public lands included in the proposed land exchange are important to the public for a variety of reasons. This acknowledgement is consistent with the Monument's establishing legislation in which Congress affirmed that the Santa Rosa and San Jacinto Mountains contain nationally significant recreational values.

(iv) Issue question:

How will the BLM ensure that the inventory of trails affected by the proposed land exchange and alternatives is complete for purposes of environmental analysis, including trails that have not previously been mapped but are currently used?

Response:

The revision process for the trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan, which was initiated in 2012, includes a comprehensive inventory of trails on federal and nonfederal lands (except Tribal lands) in the Santa Rosa and San Jacinto Mountains Conservation Area (which was established under the CVMSHCP).²⁴ This inventory utilized an analysis of aerial

²⁴ While the CVMSHCP inventory of trails attempted to capture all trails, including social trails, on BLM-managed lands and on lands under the jurisdiction of signatories to the CVMSHCP, no such attempt was made for Tribal lands since they are not subject to provisions of the CVMSHCP. The inventory of trails on Tribal lands, therefore, is limited to all official trails as depicted in *Indian Canyons Trail Guide* (ACBCI n.d.) and a few, but certainly not all, social trails. Should the BLM acquire the offered Tribal lands as proposed, the inventory will be expanded to include all social trails on the acquired lands.

imagery employing Geographic Information System (GIS) computer software, as well as on-the-ground verification. While not all inventoried “social” trails may ultimately be included in the system of approved trails, they are nonetheless addressed in chapter four of this draft EIS. Figure 5a depicts the inventoried trails. During the public review and comment period for this draft EIS, any trails identified by the public as having been overlooked and therefore not included in the inventory will be considered during preparation of the final EIS.

(v) Issue question:

How would opportunities to hike cross-country and on “social” trails (i.e., trails established by use, not construction) be affected by the proposed land exchange and alternatives?

Response:

It is important to acknowledge that management of “social” trails, whether by the BLM or the Tribe, differs from the management of “official” trails. *Official* trails in the context of the proposed land exchange are those identified by the BLM and the Tribe upon which some type of recreational use is appropriate and allowed either seasonally or year-round, and which have been inventoried and depicted on maps that are created or sponsored by the BLM or the Tribe. *Social* trails are those that developed informally from use (i.e., not constructed), and are not maintained or scheduled to be maintained by an agency.²⁵ They are typically associated with official trails, constituting shortcuts of switchbacks, trail braids (multiple paths deviating from but generally parallel to the main trail), or connectors between trails.

Generally, shortcuts of switchbacks and trail braids are deemed undesirable as they often result in adverse effects to soils, vegetation, and scenic quality. As staffing (including volunteers) and funding allow, these shortcuts and trail braids may be removed. Trail connectors, on the other hand, are evaluated with respect to their purpose and potential environmental effects; a decision is then made whether to retain the connector or remove it. Of the approximately 11.9 miles of trails on the selected public lands identified for the proposed land exchange, 9.7 miles are official and 2.2 miles are social. On the offered Tribal lands, about 2.4 miles of trail are official; mileage of social trails is undetermined.²⁶

Cross-country travel and “social” trails

Cross-country travel and the use of social trails are closely related. As previously indicated, the trails management plan element of the Coachella Valley Multiple Species Habitat Conservation Plan has been revised. While the plan that was approved in 2008 utilized the term “cross-country travel,” the revised plan refers to such activity as “off trail travel,” and defines it as hiking, mountain biking, horseback riding, or similar non-motorized conveyance off trails specifically identified as part of the approved trail system. Hence, the use of social trails constitutes off-trail (or

²⁵ These definitions of *official* and *social* trails are applicable throughout this draft EIS whenever such terms are used.

²⁶ Section 3.2.13 of this draft EIS describes the affected trails on public and Tribal lands.

cross-country) travel.

As required by the Tribe's THCP, hiking is allowed on designated trails only; no cross-country travel is allowed. In accordance with the trails management plan element of the CVMSHCP, off-trail (cross-country) travel on nonfederal lands subject to the trails management plan is prohibited from January 1 through September 30, and allowed from October 1 through December 31. Restrictions on off-trail travel on public lands in the Santa Rosa and San Jacinto Mountains will be determined through a separate decision issued by the BLM. Whether such restrictions will be consistent with the seasonal limitation under the trails management plan has not been determined.

Therefore, opportunities to hike off-trail, whether it includes the use of social trails or occurs where no trails exist, would be affected by the proposed land exchange to the extent that the BLM allows or restricts such travel on public lands selected for the exchange. If the BLM prohibits off-trail travel year-round on the subject public lands, then the proposed land exchange would have no effect on this activity, assuming the Tribe extends its cross-country travel prohibition to the acquired lands. If the BLM allows off-trail travel year-round, as is the current situation, or limits it to certain seasons, then opportunities for such travel would be reduced, again assuming the Tribe extends its cross-country travel prohibition to the acquired lands. Effects of the proposed land exchange on these opportunities are addressed in chapter four of this draft EIS.

(vi) Issue question:

How would current and future levels of trail use be affected by the proposed land exchange and alternatives?

Response:

For reasons identified above (see the response to issue question d(i)), the management of trails on lands acquired by the Tribe from the BLM is not anticipated to significantly change, if at all. If the management of trails remains the same, then levels of trail use would be dependent on factors other than a change in jurisdiction, such as increases or decreases in resident and visitor populations, shifts in recreational demands from non-motorized trail-based activities to something else (or vice-versa), increases or decreases in the population's discretionary income which could increase or decrease demand for local recreational opportunities, and so forth. In other words, current and future levels of trail use are predominantly dependent on factors other than those related to the proposed land exchange.

e. Protection of Threatened and Endangered Species

(i) Issue question:

How would the proposed land exchange and alternatives support recovery of Peninsular bighorn sheep and protect its designated critical habitat, as well as support recovery of the desert tortoise, least Bell's vireo, and southwestern willow flycatcher, particularly considering foreseeable future management of the exchanged lands?

Response:

The manner in which recovery actions for listed species and protection of critical habitat would occur on public lands acquired by the Tribe and on Tribal lands acquired by the BLM is addressed by applicable statutes and regulations, as well as applicable management plans for each jurisdiction. The effects of the proposed land exchange in this regard are described in chapter four of this draft EIS.

(ii) Issue question:

Upon exchanging lands as proposed or under one of the alternatives, how would Peninsular bighorn sheep and designated critical habitat be affected by recreational trail access, particularly during the lambing and water stress seasons?

Response:

Effects of recreational activities on Peninsular bighorn sheep and designated critical habitat are described in chapter four of this draft EIS.

(iii) Issue question:

How would the effects of climate change be addressed as it relates to the BLM's responsibility to provide for the recovery of threatened and endangered species?

Response:

There are likely more questions than answers regarding the effects of climate change on threatened and endangered species, particularly how climate change affects the BLM's statutory responsibility to provide for their recovery. Section 7(a)(2) of the federal Endangered Species Act of 1973 requires every federal agency to insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The proposed land exchange constitutes a federal action subject to requirements of the Endangered Species Act.

Regarding the effects of climate change on Peninsular bighorn sheep, it is suggested that incremental shifts in temperature and precipitation will result in a gradual reduction in the extent of suitable habitat for bighorn sheep, and as the climate warms and precipitation declines, the lower and upper elevations of suitable habitat shift upwards (Barrows and Murphy 2010). In light of these predictions, the effects of the proposed land exchange as it relates to climate change and listed species is described in chapter four of this draft EIS.

f. Potential Development of Exchanged Lands

(i) Issue question:

How would the proposed land exchange and alternatives affect potential development on the exchanged parcels, i.e., would the potential for development overall be increased, decreased,

or remain the same?

Response:

Changes in potential for development resulting from the proposed land exchange are addressed, in part, by responses to issue questions a(i) and b(i). To reiterate, the BLM would be transferring certain public lands with development potential to the Tribe (generally limited to a portion of the northeast quarter of section 16, T.4S. R.4E., and portions of the eastern half of section 36, T.4S. R.4E.), and acquiring certain lands with development potential from the Tribe (principally section 7, T.5S. R.5E.). While an acre-for-acre comparison of development potential could be used to determine if it would be increased, decreased, or remain the same, such comparison would have negligible value absent consideration of other factors as described below.

First, an analysis of development potential and its consequences must consider the type of development being contemplated, particularly with respect to characteristics of the selected public lands and the offered Tribal lands, neither of which is a broad, level expanse that lends itself to the full gamut of development options. Site characteristics, along with financial and physical viability for their modification, will, to a large extent, preclude certain types of development from occurring. In other words, properties with “potential for development” are not subject to a “one size fits all” consideration. While some portion of lands acquired by either the BLM or the Tribe may be suitable and feasible for certain kinds of development, they are not suitable and feasible for all kinds of development.²⁷

Second, proposals for development on either the public lands acquired by the Tribe or the Tribal lands acquired by the BLM are subject to applicable regulations, policies, and plans of the respective jurisdiction. Whether development occurs on public or Tribal lands, it is not an “anything goes” proposition. Development of Tribal lands acquired by the BLM would generally be limited to the kinds of multiple uses provided for by the Federal Land Policy and Management Act of 1976, except for location, entry, and patent under the public land mining laws or operation of the mineral leasing, geothermal leasing, and mineral materials laws, for which the federal lands were withdrawn under the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, subject to valid existing rights. Are there any other “development” options that would not be allowed on these public lands as precluded by statute, regulation, or applicable land use plan? Conditionally, the answer is “yes,” though whether proposals for the development of public lands will be approved or denied cannot be determined in advance of processing applications for such development.²⁸

²⁷ As described in the response to issue question d(ii), the multijurisdictional trails management plan element of the CVMSHCP addresses the potential for construction of a trail connecting the Garstin and Thielman Trails. Such new trail would be construed as a reasonably foreseeable future action or “development,” though substantially different in nature from the common perception of what “development” entails, e.g., construction of buildings, roads, and related infrastructure.

²⁸ “Developments” on public lands in the context of this discussion may include, but are not limited to, roads, communication sites, electrical transmission lines, and similar facilities that could be authorized through a right-of-way grant. In general, developments such as individual residences, commercial business structures, and the like would not be permitted on the public lands at issue.

Statutory guidance provided in section 102(a)(8) of FLPMA is helpful in understanding how the BLM manages use, occupancy, and development of public lands: “The Congress declares that it is the policy of the United States that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.” Any proposal for development of the public lands is subject to review in accordance with the National Environmental Policy Act.

Development of public lands acquired by the Tribe would be subject to preservation and management controls specified in the approved Land Use Ordinance for the Agua Caliente Indian Reservation, the Indian Canyons Master Plan, and the Tribal Habitat Conservation Plan. The ICMP and THCP allow for limited environmentally and culturally compatible development on the acquired lands; however, no development is foreseen at this time. Should development be proposed in the future, it will be subject to Tribal Environmental Policy Act (TEPA) review at the time it is proposed. As specified in the ICMP, the use of specific properties may be constrained and limited by access, compatibility with park uses, visual impact to park areas, preservation of cultural resources, preservation and protection of natural systems, maintenance of recreational uses, flood protection, and design compatibility. In accordance with THCP, a maximum of 15 percent of the habitat of “covered species” found in the Mountains and Canyons Conservation Area (which was established through the THCP) may be subject to ground disturbance, resulting in an overall minimum of 85 percent of such habitat being conserved, hence not developed.²⁹ Further, no disturbance would be allowed within a use area or defined linkage for Peninsular bighorn sheep, and certain lands adjacent to those areas would require specified levels of conservation. Projects would be sited to avoid to the maximum extent practicable impacts to wetlands or riparian areas, mesquite hummocks and thickets associated with riparian habitat, and habitat determined to be occupied by species including the least Bell’s vireo and southwestern willow flycatcher. Again, as with proposals to develop Tribal lands acquired by the BLM, restrictions on the type of development allowed are substantial.

However, public lands acquired by the Tribe would be subject to a greater level of protection with a lesser extent of development allowed. As specified in the THCP, no more than 221 acres of disturbance would be allowed if all 5,799 acres of public lands are acquired. Should fewer acres of public lands be acquired as a consequence of the land value equalization process, the extent of potential disturbance would be

²⁹ “Covered species” addressed for the Mountains & Canyons Conservation Area include Peninsular bighorn sheep (*Ovis canadensis nelsoni*), least Bell’s vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), summer tanager (*Piranga rubra cooperi*), yellow-breasted chat (*Icteria virens*), yellow warbler (*Dendroica petechial brewstri*), mountain yellow-legged frog (*Rana muscosa*), southern yellow bat (*Lasiurus ega [xanthinus]*), triple-ribbed milk-vetch (*Astragalus tricarlinatus*), desert tortoise (*Xerobates* or *Gopherus agassizii*), burrowing owl (*Athene cunicularia*), and gray vireo (*Vireo vicinior*).

prorated, i.e., at least 96.2 percent of the acquired lands would be conserved, while no more than 3.8 percent may be developed.

In summary, ascertaining whether the proposed land exchange would result in decreased, increased, or no change in development potential has limited meaning given a lack of information about the types of development that may be proposed in the future, and whether such proposals would be consistent with applicable statutes, regulations, policies, and land use plans. Further, development is conditioned by numerous forces such as local and regional economic trends, population changes, labor markets, and so on; hence, the potential for development is an ever-changing variable. Nevertheless, such potential for development, as it relates to conservation, is described in section 4.2.2.1.1 because it generally provides the best metric to determine the extent to which various resource values may be maintained.

(ii) Issue question:

How will potential development of the eastern portion of section 36, T.4S. R.4E., upon acquisition by the Tribe be addressed in the EIS, acknowledging the potential for development of private lands in the adjacent section (section 31, T.4S. R.5E.)?

Response:

The extent to which future developments constitute potential environmental impacts is addressed in the cumulative effects analysis of an EIS. Such analysis considers the direct and indirect effects of a proposed action and alternatives together with the effects of other actions that have a cumulative effect. In other words, the cumulative effects analysis considers past actions, present actions, reasonably foreseeable actions, and the incremental effects of the proposed action and alternatives. Whereas potential development of public lands acquired by the Tribe would be considered a future action, does it constitute a reasonably foreseeable action in accordance with the National Environmental Policy Act, particularly with respect to the eastern portion of section 36, T.4S. R.4E.?

The cumulative effects analysis must include reasonably foreseeable future actions within the geographic scope and the timeframe of the analysis, and such actions cannot be limited to those that are approved or funded. Reasonably foreseeable future actions are those for which there are existing decisions, funding, funding proposals, or which are highly probable, based on known opportunities or trends. However, speculation about future actions is not required. (BLM 2008a)

As previously indicated, the Tribe has not expressed intent to develop any portion of the public lands it acquires from the BLM, including the eastern portion of section 36, T.4S. R.4E. Also as previously discussed, the Tribe has committed to managing the acquired lands consistent with the Indian Canyons Master Plan and the Tribal Habitat Conservation Plan, as applicable, which constrain development options on lands within the Mountains and Canyons Conservation Area. Since there is no existing proposal to develop the acquired lands, and there has been no commitment of resources to do so, such as funding, the cumulative effects analysis of this EIS will not address potential development of section 36, T.4S. R.4E., by the Tribe. Such speculation is not warranted.

(iii) Issue question:

Acknowledging tribal sovereignty over lands managed by the Agua Caliente Band of Cahuilla Indians and the absence of a regulatory mechanism for public involvement in future decision-making processes, how will the EIS address potential future changes to the Indian Canyons Master Plan which, in part, establishes a framework for guiding conservation efforts and development, as well as address changes in land use allocations under the Tribal Habitat Conservation Plan that could increase or decrease levels of development and conservation through modification of the development/conservation ratios, particularly in the Mountains and Canyons Conservation Area?

Response:

While the Tribe may change both the ICMP and THCP, thereby potentially changing the manner in which the public lands acquired by the Tribe are managed, the BLM may likewise amend applicable land use and/or implementation-level plans, consistent with laws and regulations, thereby changing the manner in which the Tribal lands acquired by the BLM are managed. The difference, as suggested by the issue question, regards public involvement in the decision-making process. Whereas the Tribal Council can make changes to the ICMP and THCP absent public involvement, the BLM, in conformance with the Federal Land Policy and Management Act, National Environmental Policy Act, and other relevant statutes, must provide for public participation in the decision-making process. The pertinent question, therefore, is whether this difference necessitates analysis in the EIS, i.e., would a discussion of the differences in plan approval processes provide an understanding of environmental consequences that would help the BLM to make a decision that protects, restores, and enhances the environment? No. While changes to plans are not uncommon in response to changing conditions as part of adaptive management, it would be entirely speculative to address how the plans would change and what might be the results of such changes, such as increased or decreased levels of development and conservation. Therefore, this EIS will not address potential future changes to either the ICMP or THCP.

1.5 Public Comments Not Construed as Issues

During the public scoping period in advance of preparing this EIS, the public expressed certain wants or opinions that are not construed as “issues” in accordance with the National Environmental Policy Act. For the purpose of analysis when preparing the EIS in conformance with the NEPA, *an issue*, as defined in BLM’s NEPA Handbook H-1790-1 (2008a):

- has a cause and effect relationship with the proposed action or alternatives;
- is within the scope of the analysis;
- has not been decided by law, regulation, or previous decision; and
- is amenable to scientific analysis rather than conjecture.

Public comments not construed as issues are described in the scoping report (see Appendix I).

1.6 Conformance with Statutes, Regulations, Policies, Plans, and Management Strategies

Statutes:

Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.). FLPMA constitutes the BLM's "organic act," thereby establishing the manner in which the public lands are to be managed, to include protecting the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; preserving and protecting certain public lands in their natural condition, where appropriate; providing food and habitat for fish and wildlife and domestic animals; and providing for outdoor recreation and human occupancy and use.

Sections 102 and 206 of the Act are particularly relevant to the proposed land exchange. In Section 102, Congress declares it is the policy of the United States that, in part, the public lands be retained in federal ownership, unless as a result of the land use planning procedure it is determined that disposal of a particular parcel will serve the national interest. Section 206 provides that a tract of public land or interests therein may be disposed of by exchange where the Secretary of the Interior determines that the public interest will be well served by making that exchange, provided that when considering the public interest the Secretary shall give full consideration to better federal land management and the needs of state and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife, and the Secretary finds that the values and the objectives which federal lands or interests to be conveyed may serve if retained in federal ownership are not more than the values of the nonfederal lands or interests and the public objectives they could serve if acquired. Whether the proposed land exchange between the BLM and the Tribe provides for better federal land management and serves the public interest is addressed in this draft EIS; such determination will be reflected in the record of decision.

Santa Rosa and San Jacinto Mountains National Monument Act of 2000, as amended (16 U.S.C. 431 et seq.). Section 4(c) of the Act provides that the Secretary of the Interior and the Secretary of Agriculture, consistent with the management plan to be prepared for the Monument and existing authorities, may enter into cooperative agreements and shared management arrangements with any person, including the Agua Caliente Band of Cahuilla Indians, for the purposes of management, interpretation, and research and education regarding resources of the Monument. Section 6(e) of the Act, in order to support the cooperative management agreement in effect with the Agua Caliente Band of Cahuilla Indians, provides that the Secretary of the Interior may, without further authorization by law, exchange lands which the BLM has acquired using funds provided under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 et seq.) with the Agua Caliente Band of Cahuilla Indians, and that any such land exchange may include the exchange of federally owned property within or outside the Monument boundaries for property owned by the Tribe within or outside the Monument boundaries.

As described in section 1.1 of this chapter, the BLM and the Tribe entered into a cooperative agreement in 1999 to coordinate and cooperate in the management of federal lands within and outside the external boundaries of the Agua Caliente Indian Reservation where it occurs within the then-proposed Santa Rosa and San Jacinto Mountains National Monument; this constitutes the cooperative agreement referenced in section 6(e) of the Act. The BLM and the Tribe also entered into a memorandum of understanding to clarify the government-to-government relationship that exists with respect to BLM lands that are within both the Agua Caliente Indian Reservation and

the then-proposed national monument, and establish a framework for cooperation concerning acquisition and exchange of non-trust Tribal lands. Some public lands selected for the proposed land exchange were acquired by the BLM using amounts provided under the Land and Water Conservation Fund Act. In accordance with the Act, these lands may be exchanged without further authorization by law.

Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202 et seq.). Section 1852 of the Act amends section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) by designating an 8.1-mile segment of Palm Canyon within the San Bernardino National Forest as the Palm Canyon Creek National Wild and Scenic River to be administered by the Secretary of Agriculture as a wild river, and directs the Secretary to enter into a cooperative agreement with the Agua Caliente Band of Cahuilla Indians to protect and enhance river values. Section 1853 of the Omnibus Act amends section 2 of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 by expanding the boundaries of the Monument.

Palm Canyon Creek Wild and Scenic River extends as far north as the boundary of section 36, T.5S. R.4E.; this section is comprised entirely of public lands and included in the proposed land exchange. Section 1852 of the Act did not designate any portion of section 36 as part of the Wild and Scenic River, nor did it direct the Secretary of the Interior to enter into the cooperative agreement between the Tribe and the Secretary of Agriculture to protect and enhance river values. (See section 1.4, issue question b(iv), regarding the BLM's eligibility determination for National Wild and Scenic River designation for public lands in section 36.) Should the BLM retain section 36 at the conclusion of the land exchange with the Tribe, the BLM would coordinate and cooperate in the management of the public lands contained therein in accordance with the cooperative agreement entered into between the BLM and the Tribe in 1999.

Expansion of the Monument boundary addressed in section 1853 of the Act does not affect the proposed land exchange since such expansion is not proximal to the project area.

Regulations:

Title 50, Code of Federal Regulations, Part 402: Interagency Cooperation—Endangered Species Act of 1973, as amended. The population segment of bighorn sheep occupying the Peninsular Ranges of southern California (*Ovis canadensis nelsoni*) was listed as endangered in 1998 pursuant to the Endangered Species Act of 1973 (63 FR 13134). In 2001, the U.S. Fish and Wildlife Service (USFWS) designated critical habitat for Peninsular bighorn sheep (66 FR 8650); the extent of designated critical habitat was revised in 2009 (74 FR 17288). Most public lands selected for the proposed land exchange are not currently designated as critical habitat (see Figure 6). No Tribal lands offered for the land exchange, as well as any Tribal lands contiguous with the selected public lands, are designated as critical habitat.

The project area also provides habitat for three other listed species: least Bell's vireo (*Vireo bellii pusillus*), listed as endangered in 1986 (51 FR 16474); southwestern willow flycatcher (*Empidonax traillii extimus*), listed as endangered in 1995 (60 FR 10694); and desert tortoise (*Gopherus agassizii*), listed as threatened in 1990 (55 FR 12178). While critical habitat for these species was designated in 1994, 2013, and 1994, respectively (59 FR 4845, 78 FR 344, and 59 FR 5820), none occurs within the project area for the proposed land exchange.

In accordance with 50 CFR § 402.14, each federal agency shall review its actions to determine whether any action may affect listed species or critical habitat. If such a determination is made,

formal consultation is required, except if, as a result of the preparation of a biological assessment or informal consultation with the U.S. Fish and Wildlife Service, the federal agency determines, with the written concurrence of the Director of the USFWS, that the proposed action is not likely to adversely affect any listed species or critical habitat. The BLM will consult, as necessary, with the USFWS regarding the effects of the proposed land exchange on the four listed species herein described.

Title 36, Code of Federal Regulations, Part 800: Protection of Historic Properties. Section 106 of the National Historic Preservation Act, as implemented at 36 CFR Part 800, requires federal agencies to take into account the effects of their undertakings on historic properties. The State Protocol Agreement between the BLM California State Director and the California State Historic Preservation Officer (SHPO) defines the roles and relationships between the SHPO's office and the BLM under the National Programmatic Agreement. The protocol streamlines the Section 106 process by not requiring case-by-case consultation with the SHPO on most individual undertakings.

The BLM has determined that the proposed land exchange constitutes an undertaking as defined in 36 CFR Part 800, and has consulted with the SHPO regarding the potential adverse effect of the land exchange on historic properties pursuant to 36 CFR § 800.5(a). The BLM, the SHPO, and the Tribe agreed they would resolve any potential adverse effects of the undertaking on historic properties by developing a Historic Properties Management Plan (HPMP) for the affected properties (Begay 2008, available upon request). Implementation of the HPMP, which was approved by the BLM, the SHPO, and the Tribe, results in a determination of “no adverse effect” for the purposes of the land exchange.

Since the proposed land exchange is between the BLM and the Tribe, and such exchange is addressed through a cooperative agreement between these two parties, as well as by the Tribe's own Tribal Habitat Conservation Plan, formal consultation with the Tribe is considered as inherent in the exchange process and not requiring a separate undertaking. However, the Historic Properties Management Plan prepared for the proposed land exchange and approved in 2008 provides that consultation with other interested tribes be initiated upon identification of their affiliations with affected cultural resources; these interested tribes may own adjacent lands, may have occupied the region in aboriginal times, or may hold these lands sacred in oral history or belief. Consultation with these tribes regarding the proposed land exchange will continue during the public review and comment period for this draft EIS.

Policies:

BLM Manual 6220—National Monuments, National Conservation Areas, and Similar Designations. Approved in 2012, this manual provides policy guidance to the BLM for managing public lands that are components of the National Landscape Conservation System and have been designated by Congress or the President as national monuments, national conservation areas (NCAs), and similar designations. National program policies such as contained in BLM Manual 6220 are generally applicable to NLCS components to the extent they are consistent with the designating proclamation or legislation, other applicable law, and other BLM policy. The general principle for managing national monuments, national conservation areas, and similar designations is to conserve, protect, and restore nationally significant landscapes, as required under the Omnibus Public Land Management Act of 2009. With respect to the lands and realty program, Manual 6220 provides that the BLM will establish priorities for acquisition of lands and other interests within or adjacent to monument and NCA boundaries. In setting these priorities, lands

that will enhance the objects and values for which the areas were designated and lands with significant at-risk resources will be emphasized. Further, the BLM will strive to retain ownership of public land within monuments and NCAs, unless otherwise provided for in law.

The Santa Rosa and San Jacinto Mountains National Monument was designated in order to preserve the nationally significant biological, cultural, recreational, geological, educational, and scientific values found in the Santa Rosa and San Jacinto Mountains, and to secure now and for future generations the opportunity to experience and enjoy the magnificent vistas, wildlife, land forms, and natural and cultural resources in these mountains, and to recreate therein. As required by BLM Manual 6220, the BLM is to emphasize the acquisition of lands that enhance the values for which the Monument was designated to protect, and those with significant at-risk resources. For reasons previously discussed, the acquisition of Tribal lands offered under the proposed land exchange accomplishes these acquisition priorities when considered at the landscape level.

At the same time, the BLM's policy expressed in Manual 6220 is to retain ownership of public lands within monuments and NCAs unless otherwise provided for in law. Since the proposed land exchange between the BLM and the Tribe would dispose of public lands within the Santa Rosa and San Jacinto Mountains National Monument, seemingly in contradiction to the policy, are there laws that specifically address the disposal of public lands within the Monument?

Section 6 of the Monument's designating legislation, as previously indicated, provides that in order to support the cooperative management agreement in effect with the Agua Caliente Band of Cahuilla Indians as of the date of enactment of the statute, the Secretary of the Interior may, without further authorization by law, exchange lands which the BLM has acquired using amounts provided under the Land and Water Conservation Fund Act of 1965 with the Tribe, and that any such land exchange may include the exchange of federally owned property within or outside the boundaries of the Monument for property owned by the Tribe within or outside the Monument. It is important to note, however, that the land exchange is not mandated by the statute. Rather, it is a discretionary action by the BLM, subject to applicable laws and regulations governing federal actions and land exchanges. Nonetheless, it is apparent that Congress, by specifically addressing the cooperative agreement with the Tribe, was aware that it provided the foundation for entering into a memorandum of understanding addressing the opportunity for the Tribe to acquire federal lands pursuant to the authorities provided under section 206 of the Federal Land Policy and Management Act of 1976, as amended.

BLM Manual 6840—Special Status Species Management. The objectives of this policy are (1) to conserve and/or recover species listed under the Endangered Species Act (ESA) and the ecosystems on which they depend so that ESA protections are no longer needed for these species, and (2) to initiate proactive conservation measures that reduce or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing of these species under the ESA. Of particular relevance to the proposed land exchange, the policy addresses retention and disposal of public lands with respect to special status species management. Accordingly, the BLM shall retain in federal ownership those habitats essential for the conservation of any listed species, particularly those that are part of a broader, logical public land ownership management unit. The BLM may dispose of lands providing habitat for listed species, including critical habitat, but only following consultation with the U.S. Fish and Wildlife Service (USFWS) and upon a determination that such action is consistent with relevant law. (BLM 2008c)

Certain public lands selected for the proposed land exchange include modeled/essential and designated critical habitat for endangered Peninsular bighorn sheep (listed as endangered), and

modeled habitat for least Bell's vireo (listed as endangered), southwestern willow flycatcher (listed as endangered), and desert tortoise (listed as threatened). Certain public lands also contain modeled habitat for the burrowing owl, a BLM sensitive species. (Section 3.2.14 of this draft EIS describes the special status species that occur or may occur on the selected public lands; section 4.2.2 describes effects of the proposed action and alternatives on these species and their habitats.) Prior to issuing a decision whether and to what extent public lands will be exchanged for Tribal lands owned by the Agua Caliente Band of Cahuilla Indians, the BLM will consult with the USFWS in accordance with the regulations at 50 CFR Part 402.

Plans:

The BLM's planning regulations define the terms "conformity" or "conformance" to mean that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or amendment (43 CFR § 1601.0-5(b)).

California Desert Conservation Area Plan, as amended. The California Desert Conservation Area Plan was approved in 1980, and has been regularly amended. Along with the Santa Rosa and San Jacinto Mountains National Monument Management Plan (see below), it establishes the framework for managing public lands within the Monument. The CDCA plan, where it addresses land tenure adjustments, declares that intermingled land ownership patterns in much of the CDCA make management difficult for the BLM and other federal agencies, as well as state and local agencies, Indian tribes, and private landowners. Selected land exchanges will be required to improve the opportunities for use or protection of all lands in the desert, and to promote effective management of public lands administered by the BLM.

The plan further states that land exchanges, acquisitions, and disposals are necessary for effective and efficient land management in the CDCA. Private or state-owned parcels within areas designated by the plan that are sensitive or unique will require acquisition through exchange or purchases, unless the management of those resources is assured by another appropriate agency or entity. Additionally, BLM-managed land mixed in with mostly private land is difficult to manage due to access problems, lack of identified boundaries, and cost efficiency. These isolated and scattered parcels (where they do not contain legally protected species of plants or animals and cultural artifacts or affect Native American cultural values) will eventually be disposed.

As described in section 1.3 ("Purpose and Need") and in response to issue question a(i) in section 1.4, the proposed land exchange would reduce the extent of "checkerboard" landownership, thereby facilitating more effective and efficient management of public lands through consolidation of the land base, and provide the BLM and the Tribe with more logical and consistent land management responsibility in the Monument.

California Desert Conservation Area Plan Amendment for the Coachella Valley. On December 27, 2002, the BLM approved the California Desert Conservation Area Plan Amendment for the Coachella Valley which (1) provides for multiple use and sustainable development of the public lands while making progress towards healthy, properly functioning ecosystems; (2) provides for the recovery of federal and state listed species; (3) manages sensitive species to avoid future listing; (4) provides recreational opportunities on public lands; (5) makes available mineral and energy resources on public lands; and (6) facilitates land management consistency, management effectiveness, and cost efficiency across jurisdictional boundaries through collaboration with local governments of the Coachella Valley, state and other federal agencies, Indian tribes, and

private entities.

Section 2.4.9 of the plan amendment establishes criteria to be applied in evaluating the suitability of land exchanges and sales. Land exchanges and sales may be considered if they would:

- facilitate effective and efficient management of conservation areas—the term “conservation areas” refers to areas with a special designation in order to protect biological resources, such as areas of critical environmental concern, wildlife habitat management areas, wilderness areas, the Santa Rosa and San Jacinto Mountains National Monument, and conservation areas established through the Coachella Valley Multiple Species Habitat Conservation Plan;
- be conducted in coordination with the local jurisdictions;
- would result in a net benefit to the conservation areas or divert intensive uses away from sensitive areas;
- not remove rare species nor their habitat, nor remove rare habitat types from conservation management;
- not remove eligible historic properties from conservation management; and
- not divest of public domain lands in a manner which eliminates a significant public benefit.

As previously described, not only would the proposed land exchange reduce the extent of “checkerboard” landownership, thereby facilitating more effective and efficient management of public lands in the Monument through consolidation of the land base, it would change the configuration of development potential in the Monument, principally by bringing section 7, T.5S. R.5E., into public ownership—it was in this section that Michael Dunn proposed substantial residential and commercial development—and shifting development potential to areas more peripheral to the Monument’s core, i.e., portions of the eastern half of section 36, T.4S. R.4E., and a portion of the northeast corner of section 16, T.4S. R.4E., both of which could be acquired by the Tribe. However, the Tribe would manage these properties in a manner consistent with the Tribal Habitat Conservation Plan, and has not indicated any intent to pursue development of these parcels. Nevertheless, ensuring that certain lands located proximal to the center of a conservation area will not be developed for residential or commercial purposes enhances BLM’s ability to provide for long-term protection of wildlife habitat and other resource values on a landscape basis.

The proposed land exchange would not remove rare species or their habitat. Instead, habitat that is essential for the continued existence of Peninsular bighorn sheep, federally-listed in 1998 as endangered, would remain about the same (see chapter four, section 4.2.2.1.1), but with the shift in potential for development away from the center of recovery region number two in the northern Santa Rosa Mountains, implementation of recovery actions would be better facilitated.³⁰

³⁰ Recovery regions for Peninsular bighorn sheep are identified in Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (USFWS 2000). Recovery region one is located within the San Jacinto Mountains; recovery region two occurs north of State Highway 74 in the northern Santa Rosa Mountains. Although recovery plans delineate reasonable actions required to recover and/or protect listed species, they do not obligate cooperating or other parties to undertake specific tasks, and may not represent the views nor the official positions or approval of any individuals or agencies involved in the plan formulation other than the U.S. Fish and Wildlife Service. While the BLM is not obligated to implement provisions of recovery plans, it is BLM policy to incorporate objectives and actions identified in recovery plans into BLM documents, as appropriate (BLM 2008c).

Based on public comments provided at scoping meetings in 2012, however, the most controversial aspect of the proposed land exchange relative to conformance with the land tenure exchange and sale criteria described in the CDCA Plan Amendment for the Coachella Valley is whether and to what extent it divests public domain lands in a manner that eliminates a significant public benefit, particularly opportunities for non-motorized recreation on existing trails. While it is not anticipated that the exchange will substantially affect such opportunities, an analysis of impacts to recreation is described in detail in chapter four of this draft EIS.

Santa Rosa and San Jacinto Mountains National Monument Management Plan. Approved on February 5, 2004, the plan provides management guidance and identifies land use decisions to be implemented for the management of public lands in the Monument, including amendments to the CDCA Plan for specific program areas. One decision amending the BLM's CDCA Plan establishes a land acquisition strategy for the Monument. The following criteria were adopted to supplement existing BLM and Forest Service acquisition policies:

- *Strategic significance.* Agencies may have different priorities based on their specific missions. Among factors that may be significant to one agency or another are biological resource values such as lambing habitats or water sources for bighorn sheep, right-of-way needs for trails or other access purposes, geological values, and cultural resource values. The Coachella Valley Multiple Species Habitat Conservation Plan identifies the areas with high biological value and delineates trail alignments.
- *Threat level.* Areas within the Monument where there is a threat of development or a potential for a land use conflict are of high priority.
- *Opportunity.* Lands sometimes become available for acquisition through a tax sale agreement with the county tax collector. Other lands may be offered as a donation or sale at below market value if the owner wishes to seek tax credits or tax deductions. Such opportunities enable acquisitions to be made at relatively little cost.
- *Funding availability.* Various agencies have access to a number of funding sources that typically have restrictions as to where or for what purposes the funds can be used.

The management plan asserts that the proposed land exchange would provide the BLM and the Tribe with more logical and consistent land management responsibility in the Monument, and identifies the same federal lands for transfer to the Tribe as described in chapter two of this draft EIS. Further, as indicated by the response to issue question a(i) in section 1.4, the BLM's acquisition of section 7, T.5S. R.5E., constitutes a high priority acquisition which would eliminate a *potential* threat of development, though no such threat currently exists.

Coachella Valley Multiple Species Habitat Conservation Plan. On October 1, 2008, with issuance of permits by the U.S. Fish and Wildlife Service and the California Department of Fish and Game (now the California Department of Fish and Wildlife), the Coachella Valley Multiple Species Habitat Conservation Plan, which was prepared by the Coachella Valley Association of Governments, became operational. The plan provides a regional vision for balanced growth to meet the requirements of federal and state endangered species laws while promoting enhanced opportunities for recreation, tourism, and job growth. The plan established 21 conservation areas, which comprise six reserve management units; reserve management unit number six consists solely of the Santa Rosa and San Jacinto Mountains Conservation Area, which is completely contained within the Santa Rosa and San Jacinto Mountains National Monument. The habitat conservation plan also requires that reserve management unit plans be prepared for each reserve management unit to define specific management actions, schedules, and responsibilities.

The CVMSHCP includes a multi-jurisdictional trails management plan for the Santa Rosa and San Jacinto Mountains. Although the BLM is not subject to commitments made through the plan, it: (1) prepared the California Desert Conservation Area Plan Amendment for the Coachella Valley (2002) in tandem with the habitat conservation plan in order to provide the framework for those implementation actions which will support the landscape-level approach to conservation and provide for community needs; (2) participated as a cooperator in development of the trails management plan element of the habitat conservation plan; and (3) may utilize the environmental impact report/environmental impact statement prepared for the habitat conservation plan as the basis for its activity-level decision for the management of trails on public lands in the Santa Rosa and San Jacinto Mountains. As of the release date of this draft EIS for public review and comment, the BLM has not issued its decision for the federal lands component of the trails management plan, which includes trails on lands identified for exchange with the Tribe.

Based on analyses in this draft EIS and public comments submitted on such analyses, the BLM will determine whether the proposed land exchange would facilitate land management consistency, management effectiveness, and cost efficiency across jurisdictional boundaries. In particular, the BLM will focus attention on recovery of Peninsular bighorn sheep and public access to non-motorized trails for recreational purposes.

Management strategies:

BLM's 15-Year Management Strategy for the National Landscape Conservation System, 2010-2025. This strategy is organized into four major themes: (1) ensuring the conservation, protection, and restoration of NLCS values; (2) collaboratively managing the NLCS as part of the larger landscape; (3) raising awareness of the value and benefits of the BLM's NLCS; and (4) building upon BLM's commitment to conservation. The themes that most closely relate to the proposed land exchange are themes 1 and 2.

The strategy recognizes that the NLCS represents a small portion of the land managed by the BLM, and these special conservation areas must be managed within the context of the larger landscape managed by other federal, state, tribal, and local government entities. The 280,000-acre Santa Rosa and San Jacinto Mountains National Monument is one of mixed ownership with about 97,000 acres, or roughly 35 percent, managed by the BLM; hence, collaborative management among the various jurisdictions is necessary to achieve the purposes for which the Monument was established.

In order to foster more consistent, effective, and collaborative management of public lands within and outside the external boundaries of the Agua Caliente Indian Reservation where such lands occur within the Monument, the BLM and the Tribe entered into a cooperative management agreement in 1999 (BLM and ACBCI 1999a). The cooperative agreement provides the mechanism to coordinate land use planning, budget priorities, cooperative allocation of resources, and development of long-term resource management and programmatic goals between the BLM and the Tribe. The cooperative agreement additionally provides the foundation for a memorandum of understanding between the BLM and the Tribe pursuant to authorities provided under section 307(b) of the Federal Land Policy and Management Act of 1976, as amended. This MOU, also entered into between the BLM and the Tribe in 1999, provides the opportunity for the Tribe to acquire federal lands and establishes the framework for cooperation concerning the acquisition and exchange of Tribal non-trust lands (BLM and ACBCI 1999b). As the underlying foundation for the cooperative agreement and MOU is to enhance management effectiveness in furthering the purposes for which the Monument was established, the proposed land exchange is

consistent with the BLM's 15-year management strategy for the NLCS in this regard.

However, the critical reviewer, while recognizing the benefits derived from collaborative management between the BLM and the Tribe in addressing resource conservation on a landscape basis, may ask how the conservation objectives expressed in BLM's 15-year management strategy are achieved when certain public lands are no longer publically owned as would occur under the proposed land exchange. The answer has two parts: (1) the overall threat to resource values on a landscape basis would be reduced, and (2) the public lands transferred to the Tribe would be managed for conservation purposes.

- *Reduction of overall threat to resource values*

Threats to resource values principally emanate from the types of activities that alter the landscape, such as residential and commercial development. As these activities typically require grading of the land or other land-disturbing actions to accommodate buildings and infrastructure (such as roads and utilities), habitat for wildlife species and opportunities for recreation may be lost or reduced. Residential and commercial activities also can result in a variety of indirect impacts. For example, residential development along an urban-wildland interface may place humans closer to conservation lands identified for protection, the result of which is likely to be increased recreational use of these adjacent conservation lands. While recreational activities are usually of lesser environmental impact than the residential development itself, they are not completely benign. Increases of pedestrian activities emanating from the backyards of new residences can increase the potential for soil erosion where trails have not been developed, may affect vegetative cover due to trampling, and could adversely impact habitat use by wildlife species.

Hence, in considering the overall threat to resource values, one must evaluate the development capacity of the selected public lands and the offered Tribal lands identified for the land exchange. Under the exchange, would the BLM be transferring or acquiring lands with development potential? With the exception of a small portion of the northeast corner of section 16, T.4S. R.4E., and certain parts of the eastern half of section 36, T.4S. R.4E. (see discussion in the next paragraph), the public lands selected for exchange are mountainous with steep slopes that generally preclude residential and commercial development. By virtue of the topography itself, these lands are anticipated to remain as undeveloped elements of the natural landscape under Tribal ownership.

Proposals to develop private properties adjacent to sections 16 and 36 have surfaced in the past, but have not been approved for various reasons. If transferred to the Tribe, could portions of sections 16 and 36 be developed either as individual projects or in combination with adjacent development? While possible, there is no indication from the Tribe that such would occur. But potential for development at these locations must be considered in the context of conservation on a landscape basis, and whether the conservation objectives for the Santa Rosa and San Jacinto Mountains National Monument are better served by the land exchange than without it. To do so, one must consider the BLM's acquisition of the Tribal lands offered under the exchange.

As previously mentioned (see response to issue question a(i) in section 1.4), section 7, T.5S. R.5E., which is one of the properties offered by the Tribe, clearly possesses development potential. It was the site of a proposed residential and commercial development by Michael Dunn. While numerous obstacles would need to be overcome for development to occur in section 7, the potential will continue to exist while in nonfederal ownership. Therefore, one must weigh the

possibilities for development in both the near and far terms relative to public land disposal and acquisition when managing lands for the conservation, protection, and restoration of NLCS values. Under the proposed land exchange, development potential may be increased in sections 16 and 36, T.4S. R.4E., upon the transfer of public lands to the Tribe, though no reason to assume such development would occur is warranted, but decreased in section 7, T.5S. R.5E., upon its transfer to the BLM,³¹ though again, there is no reason to assume that development in section 7 would occur under Tribal ownership. Rather, it is the short- and long-term *potential* for development that is being considered here. Since section 7 is closer to the Monument's interior than sections 16 and 36, which are more peripheral, the "trade" of development potential under the proposed land exchange enhances the conservation of NLCS values when compared to no such exchange, i.e., protection of existing values can be more difficult where development is centrally located and incompatible indirect effects may radiate in all directions when compared to developments that are peripherally located where indirect effects principally emanate from only one or two directions.

- *Transferred lands managed for conservation purposes*

See response to issue question a(iii) in section 1.4 of this draft EIS: how would the proposed land exchange and alternatives support conservation of resource values in the project area?

BLM-California's Five-Year Strategy for National Conservation Lands, 2013-2018. BLM-California's five-year strategy tiers, or steps down, from the national 15-year management strategy discussed above. Actions to implement BLM-wide actions listed in the national strategy, as well as California-specific actions based on the national framework, are identified. BLM-California's five-year strategy advances the four main themes and priority goals developed in the national strategy. Specific to the theme of collaboratively managing the National Conservation Lands as part of the larger landscape, the BLM-California strategy, in promoting the adoption of a cross-jurisdictional approach to landscape-level conservation planning and management, directs agency staff to pursue the acquisition of inholdings within NLCS unit boundaries from willing sellers.

The proposed land exchange between the BLM and the Tribe would accomplish this directive upon acquisition of the offered Tribal lands, though not through a land sale, rather through an exchange. The BLM-California five-year strategy does not address land exchanges. The manner in which such an exchange enhances conservation on a landscape basis has been previously discussed.

Consistent with the five-year strategy, but well in advance of its development, the BLM entered into a cooperative agreement with the Tribe to coordinate and cooperate in management of federal lands within and outside the external boundaries of the Agua Caliente Indian Reservation where located within the then-proposed Santa Rosa and San Jacinto Mountains National Monument. This relationship provides for more consistent, effective, and collaborative

³¹ Lands acquired by the BLM would be administered as part of the Santa Rosa and San Jacinto Mountains National Monument, and subject to provisions of the applicable land use plan. The California Desert Conservation Area Plan Amendment for the Coachella Valley (BLM 2002a), which provides direction for the management of public lands in the Monument, requires that at least 99 percent of vegetative community types within Monument be conserved, thereby allowing no more than one percent disturbance to these vegetative communities. Hence, section 7, T.5S. R.5E., if acquired by the BLM, would be subject to this conservation requirement.

management of these lands, thereby achieving goals 2A and 2B of the five-year strategy: goal 2A is to emphasize an ecosystem-based approach to management of National Conservation Lands in the context of the surrounding landscape; goal 2B is to adopt a cross-jurisdictional, community-based approach to landscape-level conservation planning and management.

Other:

Secretarial Order No. 3308 regarding management of the National Landscape Conservation System (November 15, 2010). The Secretary of the Interior's order sought to further the purposes of the Omnibus Public Land Management Act of 2009, which established the National Landscape Conservation System under the jurisdiction of the BLM in order to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.

The order stated that it would remain in effect until its provisions are converted to a Departmental manual or until it is amended, superseded, or revoked, whichever comes first. The Secretarial Order ceased to be applicable to the Monument as of July 13, 2012, upon release of Departmental Manual 6220 addressing the management of BLM's national monuments, national conservation areas, and similar designations.

1.7 Land Use Classification and Valid Existing Rights

Land use classification:

Public lands selected for the proposed land exchange are designated Multiple Use Class L ("Limited Use") under the CDCA Plan, as amended. Class L protects sensitive, natural, scenic, ecological, and cultural resource values. Public lands designated as Class L are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished.³² The management of lands acquired by the BLM with respect to land use classifications is described in section 2.2 of chapter two.

Valid existing rights:

Federal land or interest in land should be conveyed with a minimum of encumbrances. All encumbrances authorized as rights-of-way, leases, permits, and/or easements affecting federal land that are part of an exchange proposal must be reviewed to determine the validity and continued need for the authorization. The BLM should terminate or modify, as appropriate, those authorizations which are no longer needed to serve the purposes for which they were established. If there is a continuing need for any encumbrance, the BLM should either convey the administration and ownership of the encumbrance to the acquiring party or retain federal

³² Multiple Use Guidelines for Class C ("Controlled Use" [wilderness]), Class L ("Limited Use"), Class M ("Moderate Use"), and Class I ("Intensive Use") describe land-use and resource-management guidelines for 19 land uses and resources as they apply to each class. These land uses and resources are agriculture, air quality, water quality, cultural and paleontological resources, Native American values, electrical generation facilities, transmission and distribution facilities, communication sites, fire management, vegetation harvesting, land-tenure adjustment, livestock grazing, mineral exploration and development, motorized-vehicle access/transportation, recreation, waste disposal, wildlife species and habitat, wetland/riparian areas, and wild horses and burros.

ownership and administration of the authorization. The BLM may either convey lands out of federal ownership subject to a right-of-way or reserve to the U.S. the interest in the right-of-way. Conveyance subject to a right-of-way will transfer the administration of the right-of-way authorization to the new property owner, including the collection of rental income. Conveyance with a reservation to the U.S. provides for retention of federal control over the right-of-way for federal purposes, including the right to enforce the terms and conditions of the right-of-way, renew and extend the authorization, and to collect rental income. (BLM 2005b)

Selected public lands in sections 16 and 36, T.4S. R.4E., contain the following rights-of-way:

- CARI-004966 – Riverside County Flood Control and Water Conservation District: 2.572 acres, section 16, NENENE; issued May 15, 1964 (flood control levee)
- CARI-004693 – Desert Water Agency: 0.419 acre, section 36, lot; issued July 15, 1987 (water storage facilities)
- CACA-008578 – Robert Hope: 1 acre, section 36, lot; issued August 19, 1981 (unpaved parking lot)

As previously indicated, retention of public lands in the sections 16 and 36 by the BLM is a likely outcome of the land value equalization process described in section 2.2. Therefore, the manner in which the BLM addresses existing rights-of-way in these sections will not be determined until land appraisals have been completed and a proposed decision is formulated. If sections 16 and 36 are to be retained by the BLM, it would continue to administer these rights-of-way. If these sections are to be acquired by the Tribe, the BLM would consider whether to convey the administration and ownership of the encumbrances to the Tribe or retain federal ownership and administration of the authorizations.

No mining claims or other valid existing rights occur on the exchange lands.

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